

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

22 CR 673 (LAK)

5 SAMUEL BANKMAN-FRIED,

6 Defendant.

Trial

7
8 New York, N.Y.
9 October 19, 2023
10 9:32 a.m.

11 Before:

12 HON. LEWIS A. KAPLAN,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

16 BY: DANIELLE R. SASSOON

NICOLAS ROOS

17 DANIELLE KUDLA

SAMUEL RAYMOND

18 THANE REHN

Assistant United States Attorneys

19 COHEN & GRESSER, LLP

Attorneys for Defendant

20 BY: MARK S. COHEN

21 CHRISTIAN R. EVERDELL

SRI K. KUEHNLENZ

22 DAVID F. LISNER

23 Also Present:

Luke Booth, FBI

24 Kristin Allain, FBI

Arjun Ahuja, USAO Paralegal Specialist

25 Grant Bianco, USAO Paralegal Specialist

Anthony Imperato, USAO Paralegal Specialist

1 (In open court; jury not present)

2 THE COURT: Good morning, everyone.

3 MS. SASSOON: Good morning.

4 THE DEPUTY CLERK: Please be seated.

5 THE COURT: Just before we get the jury, Andy. Did
6 you work out an arrangement?

7 MR. ROOS: On the schedule?

8 THE COURT: Yes. And notice to each other?

9 MR. COHEN: Yes, your Honor.

10 THE COURT: So what's the schedule?

11 MR. COHEN: There's one piece to it that we need to
12 obviously—well, your Honor has to approve everything, but we
13 now believe that if there's a defense case at all, your Honor,
14 it will be one week or less. In light of that, we would—I
15 think the government agrees with us that we will give them any
16 rebuttal expert disclosures on October 23rd, and that we will
17 disclose our other witnesses to them two days before they
18 testify. The current status is that the trial will resume on
19 October 26th, and I guess the government has some witnesses for
20 that day. Our request for the Court is that if we could begin
21 any defense case on the morning of the 27th. If the Court was
22 okay with that, we would make our disclosures to the defense on
23 the 25th.

24 THE COURT: What's the government's point of view
25 about this?

1 MR. ROOS: So we oppose starting the next day, and the
2 reason is, the government currently has three potential
3 witnesses, were we to call any of them, for the 26th. One is
4 an FBI Agent, and we proposed a stipulation to just eliminate
5 him. One is an investor witness. The length of the first
6 investor witness in this case was 30 minutes. One is a
7 customer witness. The length of the last customer witness was
8 about 20 minutes. So were the government to put on all three
9 of those folks, I could see it being an hour and ten minutes.
10 So I think it's wasteful to take a whole day, after we've had a
11 break, to have the jury come in and then go home.

12 THE COURT: Look, ordinarily, Mr. Cohen, I would
13 accommodate what you've asked except that you have almost a
14 full week with no court here preceding the government's brief
15 presentation on the 26th, and in those circumstances, I'm going
16 to hold you to what you said last night, which was that you
17 would be ready to start with any defense case as soon as the
18 government rests. Obviously we have to deal with motions,
19 but—so that's what we're going to do.

20 And I would appreciate it if counsel on both sides
21 kept my chambers posted as you post each other about what
22 disclosures have been made and witnesses that you intend to
23 call and the like so that I know what is going to be happening
24 on the 26th.

25 MR. COHEN: Your Honor, might I ask, if it's going to

1 be the 26th, that we not be required to start any defense case
2 until after the lunch break so we have—

3 THE COURT: That's okay.

4 MR. COHEN: —a time certain.

5 THE COURT: That's okay.

6 Okay. Let's get the jury.

7 MR. ROOS: Judge, one other thing. You earlier in the
8 week asked for our letters on jury instructions today by the
9 close of business, and not to be cute about it, but I was
10 wondering what time the close of business is.

11 THE COURT: 5:00.

12 MR. ROOS: Got it.

13 THE COURT: And if they're going to be submitted in
14 the form of a whole new set of proposed instructions, as
15 opposed to—

16 THE DEPUTY CLERK: Jury entering.

17 THE COURT: —specific proposed changes, I'm going to
18 have to have a redline with it, from whichever side does it
19 that way.

20 MR. ROOS: Ours are just specifics. It will be a
21 short letter.

22 THE COURT: All right.

23 (Continued on next page)
24
25

1 (Jury present)

2 THE COURT: Good morning, everyone.

3 The record will reflect that the defendant and the
4 jurors all are present.

5 Members of the jury, I talked to you a little bit
6 about the schedule yesterday. My current best
7 estimate—subject to change always—is that the taking of
8 testimony in the case will finish not later than November 3rd.
9 If it were to finish on November 3rd, of course we would be
10 into the beginning of the next week for your deliberations and
11 the like, but we're now moving along a little faster than I had
12 hoped.

13 Okay. Next witness for the government.

14 MS. SASSOON: The government calls Can Sun.

15 THE DEPUTY CLERK: Sir, if you could please step
16 around and raise your right hand.

17 (Witness sworn)

18 THE DEPUTY CLERK: Thank you. Please be seated.

19 If you could please state your name and spell your
20 first and last names for the record.

21 THE WITNESS: My name is Can Sun, C-A-N, S-U-N.

22 THE COURT: You may proceed.

23 MS. SASSOON: Thank you, your Honor.
24
25

1 CAN SUN,

2 called as a witness by the Government,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SASSOON:

6 Q. Good morning, Mr. Sun. What is your profession?

7 A. I'm an attorney.

8 Q. Where did you grow up?

9 A. I grew up in a number of countries—China, Singapore,
10 Canada, and the US.

11 Q. And I'll just ask you to slow down a bit.

12 Where did you go to law school?

13 A. I went to Yale.

14 Q. And what did you do after Yale Law School?

15 A. First I worked at a boutique firm in DC doing human rights
16 work; after that, I worked at Davis Polk here in New York; and
17 after that, moved to Fenwick & West in Seattle.

18 Q. What kind of legal work did you do at these law firms?

19 A. At the first boutique firm in DC I did human rights work;
20 and at Davis Polk, I did corporate mergers, acquisitions, IPO
21 work; and at Fenwick, I did startup and blockchain,
22 crypto-related work.

23 Q. At any of these jobs did you practice criminal law?

24 A. No.

25 Q. Did there come a time when you left the law firms for a

1 different type of job?

2 A. Yes. In August '21 I left Fenwick & West to join FTX.

3 Q. I believe you said, but can you just repeat when you joined
4 FTX.

5 A. End of August 2021.

6 Q. What was your position when you joined FTX?

7 A. I was general counsel.

8 Q. What were your general responsibilities as general counsel
9 at FTX?

10 A. I headed up legal at FTX International.

11 Q. And what types of duties did that involve?

12 A. Included licensing regulatory strategy, internal corporate
13 work, everything from fundraising, cap tables, employment
14 agreements, stuff like that.

15 Q. As part of your responsibilities as general counsel, were
16 you involved in any work related to how FTX treated and dealt
17 with customer assets?

18 A. Yes.

19 Q. At any time as general counsel, did you approve lending FTX
20 customer money to Alameda Research?

21 MR. COHEN: Objection.

22 THE COURT: What's the objection?

23 MR. COHEN: Leading.

24 THE COURT: Sustained.

25 Q. At any time as general counsel, Mr. Sun, what, if anything,

1 did you approve related to lending FTX customer money to
2 Alameda?

3 MR. COHEN: Same objection.

4 THE COURT: Overruled.

5 A. Never approved anything like that, and I would never have
6 done it either.

7 Q. And if you could just speak up a little bit, Mr. Sun. I
8 want to make sure the jury can hear you.

9 A. No, absolutely not.

10 Q. While you worked at FTX, did you have conversations with
11 the defendant about how FTX treated its customer assets?

12 A. Yes.

13 Q. And what, if anything, did the defendant tell you about how
14 FTX received customer fiat or dollar deposits?

15 A. That they were received, safeguarded, and segregated from
16 FTX's customer funds—sorry—from FTX's proprietary funds.

17 Q. And you mentioned that the defendant told you that customer
18 funds were segregated from FTX proprietary funds. What did you
19 mean by FTX proprietary funds?

20 A. So FTX's own funds as a company, funds that it uses to pay
21 for bills, to pay for, you know, website services, pay vendors,
22 those were FTX's own funds. FTX customers' funds were always
23 separated from those.

24 Q. And you referred to the defendant telling you that FTX
25 customer funds were segregated from proprietary funds. What

1 does "segregated" mean?

2 A. It means it is held separately, in a separate account from
3 FTX's own proprietary funds.

4 Q. What did you understand was the purpose of segregating
5 customer funds from FTX proprietary funds?

6 A. To clearly identify them as customer funds so that they
7 would not be misappropriated.

8 Q. And when you say "misappropriated," what do you mean by
9 that?

10 A. Stolen, used for anything else other than what the customer
11 instructs us to do.

12 Q. Did you at any time observe public statements by the
13 defendant about how FTX treated customer assets?

14 A. Yes.

15 Q. In what forums?

16 A. On Sam's tweets; his public congressional testimonies; his,
17 you know, statements to investors; to regulators; other
18 conversations.

19 Q. And what kinds of things do you recall observing the
20 defendant say publicly about how FTX treated customer assets?

21 A. That all customer assets of FTX were safeguarded,
22 segregated, protected.

23 Q. You talked about customer dollar or fiat deposits. What,
24 if anything, did the defendant tell you about how
25 cryptocurrency deposits were received at FTX?

1 A. They were received and kept in an omnibus wallet for all
2 customer funds that was separated from FTX's own proprietary
3 funds as well.

4 Q. And just to be clear, is that what the defendant told you?

5 A. Yes.

6 Q. And you mentioned—

7 THE COURT: I didn't hear that. I'm sorry. I didn't
8 hear an answer.

9 THE WITNESS: Yes.

10 THE COURT: Thank you.

11 Q. You mentioned that the defendant described an omnibus
12 wallet for customers. What do you mean by an omnibus wallet?

13 A. Right. So say if two customers each had one Bitcoin and
14 they deposit it into the platform. We would not have one
15 Bitcoin wallet for each customer; instead, we would keep both
16 of those customers' assets into one combined wallet, so that
17 one wallet would have two Bitcoins, but that is all customer
18 assets and it is separated from all of the remaining FTX
19 proprietary assets.

20 Q. As general counsel of FTX, were you familiar with something
21 called the key principles of FTX?

22 A. Yes.

23 Q. And what were those?

24 A. I used to be able to recite this, but—

25 Q. So before you recite them, can you explain what we're

1 talking about when we talk about the key principles.

2 A. Sure. So Sam was on a movement to create a sensible
3 regulatory framework for regulating the crypto industry, and so
4 as part of that framework, FTX had a list of five
5 investor—sorry—key principles for investor protection, things
6 like market manipulation, things like market integrity,
7 prevention of financial crimes, safeguarding of customer
8 assets, and I can't remember the last one off the top right
9 now.

10 Q. And these principles, were they documented?

11 A. Yes.

12 Q. How were they documented?

13 A. It was on FTX policies website; it was in Sam's testimony
14 to Congress; and we also described it in various forums with
15 regulators we were working with around the world.

16 Q. And so based on your work with the defendant, what's your
17 understanding of his role in crafting and disseminating these
18 key principles?

19 A. He was very, very much involved.

20 Q. And what do you recall, at a general level, about what
21 these key principles said about the treatment of customer
22 assets?

23 A. Safeguarded and protected.

24 Q. As general counsel of FTX, did you get questions from
25 regulators about how FTX handled customer deposits?

1 A. Yes.

2 Q. And what about from FTX customers?

3 A. Yes.

4 Q. And did you respond to those inquiries?

5 A. Yes.

6 Q. And how did you get the information to respond to those
7 inquiries?

8 A. Based on the information that Sam gave me, based on
9 information I got from other management at FTX, from the
10 finance team, and obviously all of the public statements that
11 we had talked about earlier.

12 Q. And so what types of things were you saying to regulators
13 and customers about how FTX treated customer assets?

14 A. They were safeguarded, segregated, and protected.

15 Q. Did you personally verify how customer dollar or crypto
16 deposits were treated by FTX?

17 A. I did not.

18 Q. Were you involved in any way in monitoring FTX's bank
19 accounts?

20 A. No, I was not.

21 Q. Did you have login access to the bank accounts or the
22 wallets?

23 A. No, I did not.

24 Q. You've talked about how assets were received. What, if
25 anything, did the defendant tell you about how customer

1 deposits were treated upon being received into FTX's accounts
2 or wallets?

3 A. Are you talking about fiat or crypto or both?

4 Q. Why don't we start with fiat.

5 A. So fiat, it would be transferred into what we call FBO bank
6 accounts held by FTX at various financial institutions and,
7 again, separated from FTX's own proprietary assets.

8 For crypto assets, they would come in to what we call
9 a sweep wallet and then combined into an omnibus wallet and
10 also separated and segregated from FTX's own proprietary
11 assets.

12 Q. You mentioned a term called an FBO account. What does that
13 mean?

14 A. For the benefit of. Basically where a bank account is
15 owned in the name of one entity but that entity does not
16 actually have beneficial ownership of the funds in that
17 account, and the funds in that account are actually held for
18 the benefit of others—in this case, FTX's customers.

19 Q. Yes or no: In your role as FTX's general counsel, did you
20 have expectations about how customer assets should be treated?

21 A. Yes.

22 Q. And if you could just speak up. I see you're nodding,
23 but—

24 A. Yes, yes.

25 Q. And what were the expectations you had about how customer

assets should be treated based on?

A. What is it based on? So my understanding is FTX protects, safeguards customer assets a hundred percent, and it was based on, you know, my conversations with Sam, conversations with other management, conversations with the finance team, FTX's general standing in the industry, our regulatory requirements, Sam's public statements. Everything was unequivocally that FTX protects customer assets a hundred percent.

Q. Did you believe that FTX customer deposits could permissibly be commingled with other funds of the business?

A. No.

Q. And why not?

A. Those funds belongs to the customers and does not belong to FTX.

Q. Based on your conversations with the defendant, what was your understanding about how, if at all, FTX could use customer assets?

A. Only at the direction of the customer.

Q. And what does that mean?

A. So if the customer wants to trade it, they can trade it; if they want to withdraw it, they can withdraw it; but nothing else.

Q. And what was your understanding as to whether FTX could borrow customer money without express authorization?

A. None whatsoever.

1 Q. What about whether Alameda could borrow customer money
2 without express authorization?

3 A. None whatsoever.

4 Q. When you say "none whatsoever," what do you mean?

5 A. So there's—there's none. There's none. There's, you
6 know, there's a borrow-lending program. If a user wants to
7 voluntarily, affirmatively choose to lend out their assets on
8 the platform, Alameda or other borrowers could borrow it, but
9 without express authorization from the user that they want to,
10 let's say, lend out their funds, neither FTX, Alameda, or
11 anyone had any rights to those assets because it belongs to the
12 user.

13 Q. While you worked at FTX, were you aware of an entity called
14 North Dimension?

15 A. Yes.

16 Q. What did you know about North Dimension based on your work
17 at FTX?

18 A. First time I saw it I think was in the spring of '22. I
19 was putting together an organization chart showing the
20 different FTX and Alameda entities. I saw that entity, wasn't
21 sure what it did, asked our finance team, and they mentioned
22 that it made some payments on behalf of FTX—of Alameda.

23 Q. Were you aware whether North Dimension was receiving
24 customer deposits of FTX into its bank account?

25 A. No, I was not.

1 Q. And were you aware, prior to November 2022, of Alameda
2 receiving FTX customer deposits into its bank accounts?

3 A. I was not.

4 Q. As general counsel, would you have approved of Alameda
5 receiving FTX customer deposits?

6 MR. COHEN: Objection.

7 THE COURT: Sustained.

8 Q. If you had been told that Alameda was receiving FTX
9 customer deposits, would that have raised concerns for you as
10 general counsel of FTX?

11 MR. COHEN: Same objection.

12 THE COURT: What is it? What is the objection?

13 MR. COHEN: Calls for speculation and hypothetical.

14 MS. SASSOON: Your Honor, he was the general counsel.

15 THE COURT: Yes, I understand.

16 MR. COHEN: The phrase begins "If you had been told."

17 THE COURT: Sustained.

18 BY MS. SASSOON:

19 Q. While you worked as general counsel at FTX, were you aware
20 of an account within the FTX database called the fiat@ftx.com
21 account?

22 A. I was not aware.

23 Q. Did there come a time when you started working on terms of
24 service for FTX?

25 A. Yes.

1 Q. What are terms of service?

2 A. It is a legal document that sets out the rights and
3 responsibilities of FTX and our users, how they relate to each
4 other.

5 Q. As you understood it, were the terms of service the only
6 place where FTX spelled out the company's obligations to
7 customers?

8 A. It was not.

9 Q. Where else did the company spell out its obligations to
10 customers?

11 A. FTX had a variety of other documents. For instance, on our
12 Zendesk help page, there was literally dozens of articles
13 spelling out how our liquidation program works, how market
14 maker program works, and obviously that's in addition to public
15 statements made by Sam, his tweets, his congressional
16 testimonies, and stuff like that.

17 Q. As far as you know, were the terms of service accessible on
18 the FTX website?

19 A. Yes.

20 MS. SASSOON: And can we please pull up Government
21 Exhibit 587, which is in evidence.

22 Q. Do you recognize this?

23 A. Yes.

24 Q. What is it?

25 A. This is the sign-up page when a new user wants to sign up

1 for an account on FTX.

2 Q. And as far as you know, did a customer have to agree to the
3 terms of service to open an account?

4 A. Yes.

5 THE COURT: Well, I'm going to strike the answer and
6 ask you to rephrase the question, because "as far as you know"
7 leaves this pretty delphic.

8 MS. SASSOON: Yes.

9 Q. Were you familiar with how this page operated in terms of
10 setting up an account?

11 A. Yes. So the user has to type in an email, a proposed
12 password, and click to agree to the FTX terms of service in
13 order to create the account.

14 Q. How do you know that?

15 A. It was—it was on our website.

16 Q. Around when did you work on the terms of service?

17 A. Right when I joined, in late August/early September '21.

18 Q. And what was the status of FTX's terms of service when you
19 started working on them?

20 A. It was about 80, even 90 percent done, and I came in and
21 brought it to completion.

22 Q. And just to be clear, were there terms of service already
23 in place for the company at that time?

24 A. Yes.

25 Q. And so the terms of service that you were working on, how

1 did they relate to the preexisting terms of service?

2 A. It was intended to be a replacement of the existing terms
3 of service.

4 Q. And why were the existing terms of service being replaced?

5 A. We were getting licensed in the Bahamas, and in order to
6 comply with regulatory requirements. And also, the older terms
7 of service, which I did not draft, as I understand it, was more
8 of a, you know—more for a startup company. As we were growing
9 bigger, we wanted a more robust set of terms and conditions.

10 Q. What was the defendant's role, if any, in finalizing these
11 terms of service that you reviewed?

12 A. He approved of it.

13 Q. How did the defendant approve those terms of service?

14 A. When we were going to go live with the terms of service in
15 May of '22, we created a—a chat group, and I notified everyone
16 in the group, including Sam, that basically we were going to go
17 live with the new terms of service, we were going to move all
18 customers to FTX Bahamas, and he approved of it.

19 Q. You said that the terms of service were going live in May
20 of 2022. When was the language of these terms of service
21 actually finalized?

22 A. September '21.

23 Q. Did the terms of service that you reviewed have a provision
24 on the use of customer assets?

25 A. Use of customer assets.

1 Q. Or the treatment of FTX customer digital assets.

2 A. Yes.

3 MS. SASSOON: At this time the government offers
4 Government Exhibit 558 pursuant to stipulation 2000, which the
5 parties have stipulated is FTX terms of service dated May 13,
6 2022. The government is not offering this document or the
7 statements in it for their truth but for their effect, if any,
8 on readers of the terms of service.

9 MR. COHEN: No objection, your Honor.

10 THE COURT: Received on a limited basis stated by
11 counsel.

12 (Government's Exhibit 558 received in evidence)

13 MS. SASSOON: Can we publish Government Exhibit 558,
14 please.

15 MR. COHEN: Your Honor, may we briefly be heard at
16 sidebar?

17 THE COURT: Yes.

18 (Continued on next page)

19

20

21

22

23

24

25

1 (At the sidebar)

2 MR. COHEN: Your Honor, we would also ask that they be
3 admitted as a verbal act and not just for the effect on the
4 listener. It's something I'd like to cover in my exam, and I
5 figured we could deal with it now since it's been put in, your
6 Honor.

7 THE COURT: What exactly do you mean and what
8 significance would doing or not doing what you ask have?

9 MR. COHEN: Well, what we plan to do—I don't know
10 what counsel is going to do, but I assume she's going to call
11 out certain sections of the terms of service and ask the
12 witness about them, and we would like to do the same thing, not
13 to say that what the sections relate to was actually done but
14 that—

15 THE COURT: Not to say that the sections?

16 MR. COHEN: In other words, not that the contract
17 terms—calling out the contract terms means the performance was
18 actually made or not made but simply that this is what they
19 say.

20 MS. SASSOON: Two things, your Honor.

21 One, it's the government's direct exam right now so if
22 the defense wants to admit an exhibit or for another purpose,
23 it's not the appropriate time.

24 But two, what counsel described is also not a purpose
25 for the document's truth, as I understood his explanation, and

1 so the limited purpose of not offering it for its truth is not
2 undermined by what counsel just described.

3 THE COURT: I'll leave this for cross.

4 MR. COHEN: Okay.

5 THE COURT: If there's anything to do here, I'm
6 puzzled by what you're doing with this, but that's another
7 matter.

8 MS. SASSOON: With the terms of service?

9 THE COURT: Yes. But I'll listen.

10 MR. COHEN: Okay.

11 THE COURT: I mean, counsel, I trust you understand my
12 ruling that legal import of the terms of service is, in all
13 likelihood, a question of law for me, it's not a jury question.

14 MS. SASSOON: Yes, your Honor. I do think, to the
15 extent that this was disseminated to users of FTX, what's in
16 there is potentially relevant for its effect on the listener.
17 To the extent the defendant was aware of certain provisions, it
18 will be relevant to his state of mind, and to the extent that
19 these provisions are consistent with discussions that the
20 witness had with the defendant, that's also relevant to the
21 defendant's state of mind. So Mr. Sun reviewed these terms of
22 service, he thought that the provisions about the treatment of
23 customer digital assets was consistent with company policy, and
24 he therefore approved this terms of service.

25 THE COURT: Okay. You have a different view,

1 Mr. Cohen?

2 MR. COHEN: I'm going to listen to the direct, your
3 Honor.

4 THE COURT: Okay.

5 MS. SASSOON: One more thing, your Honor, just for
6 clarity. We also plan to ask this witness about a provision
7 that the defense highlighted in its opening because they opened
8 on it, they're making an argument about a provision here, and
9 so we want to contextualize it.

10 THE COURT: I'll listen.

11 (Continued on next page)

1 (In open court)

2 MS. SASSOON: Mr. Imperato, if we could publish
3 Government Exhibit 558.

4 BY MS. SASSOON:

5 Q. Mr. Sun, what is this? And just make sure the mic is
6 positioned so that we can all hear you.

7 A. Yes. This is the FTX terms of service.

8 Q. And which version of the terms of service?

9 A. This is the new version that was published May 13, '22.

10 Q. And are these the terms of service you described the
11 defendant approving?

12 A. Yes.

13 MS. SASSOON: If we could go to page 10, and look at
14 provision 8.2.6.

15 Q. Mr. Sun, is this a provision that you reviewed in the
16 course of finalizing the terms of service?

17 A. Yes.

18 Q. I want to direct your attention to (A), which says, "Title
19 to your Digital Assets shall at all times remain with you and
20 shall not transfer to FTX Trading."

21 First of all, what is FTX Trading?

22 A. That is the FTX entity providing services to customers
23 under the terms of service.

24 Q. And so how does this entity relate to ftx.com, the
25 international exchange?

1 A. It was the entity providing services at ftx.com on the
2 website.

3 Q. And where it says, "Title to your Digital Assets shall at
4 all times remain with you," what did you understand that to
5 mean?

6 A. It means when a user deposits their assets onto the
7 exchange, they continue to own those assets.

8 Q. Directing your attention to provision (B), do you see where
9 it says, "None of the Digital Assets in your Account are the
10 property of, or shall or may be loaned to, FTX Trading"?

11 A. Yes.

12 Q. How does the language there correspond to discussions you
13 had with the defendant about the treatment of FTX customer
14 assets?

15 A. It's fully consistent.

16 Q. How so?

17 A. That customer assets, when deposited onto the platform,
18 continued to belong to the customers and FTX has no rights to
19 customers' assets.

20 Q. No. (C), it says, "You control the Digital Assets held in
21 your Account." What does it mean to control the digital assets
22 in your account?

23 A. You can choose to do whatever you want with the assets; you
24 can withdraw it, trade it, lend it, you know, do whatever you
25 want with it.

1 Q. "Digital Assets," what does that mean?

2 A. Cryptocurrencies.

3 Q. So this paragraph does not mention fiat currency. Did you
4 understand fiat currency to be treated differently by the
5 exchange?

6 A. No. Exactly the same.

7 Q. As far as you know, did this provision, 8.2.6, regarding
8 Digital Assets, exist in prior versions of FTX's terms of
9 service?

10 A. This exact language, not to my recollection.

11 Q. And in your view as general counsel, did the addition of
12 this exact language represent a change in FTX policy?

13 MR. COHEN: Objection.

14 THE COURT: Overruled.

15 A. No, it did not. It was the same policy.

16 Q. And so how do you explain the addition of this provision?

17 A. Again, it was fully consistent with FTX's policy
18 throughout. I like to make everything clear so the user knows,
19 you know, that assets deposited on the exchange continued to be
20 owned by them.

21 Q. So when was this language in the terms of service actually
22 finalized?

23 A. September '21.

24 Q. And at that point, in September 2021, did you consider the
25 obligations set out here to be an existing FTX policy?

1 A. Yes.

2 MS. SASSOON: Okay. We can take this zoom-out down
3 and go to page 16.

4 Q. And I want to direct your attention to what is titled
5 Section 16. Do you see where it says "MARGIN TRADING"?

6 A. Yes.

7 Q. And do you see at the top, 16.1 says, "This Section 16
8 applies only to the extent you are permitted to engage in
9 margin trading on the Platform"?

10 So if a customer was not doing margin trading on FTX,
11 did this section apply to that customer?

12 A. It would not.

13 Q. Let's go to a subsection of Section 16, MARGIN TRADING, on
14 page 17, provision 16.4.

15 So first of all, is 16.4 within the Section 16 called
16 MARGIN TRADING?

17 A. Yes.

18 Q. And so does this provision apply only to people doing
19 margin trading?

20 A. Yes.

21 Q. Are you familiar with this provision?

22 A. Yes.

23 Q. Just looking at the first sentence, it says, "Under certain
24 market conditions, it may become difficult or impossible to
25 liquidate a position."

1 As general counsel, did you hear the defendant
2 describe FTX's liquidation protocols?

3 A. Yes.

4 Q. And based on what the defendant described, what did you
5 understand to be the procedure for liquidating positions on the
6 FTX exchange?

7 A. So it is a multistep process. The first step happens is,
8 if your collateral—if the value of your account on the
9 exchange starts to decrease and it hits 3 percent of your
10 position size, that's when FTX's trading engine starts to
11 liquidate you on the market. If the market moves further
12 adversely to you, it goes further down. Let's say your
13 collateral, your value of your account drops to 1.5 percent of
14 your total position, notional size, then what happens is, your
15 positions are now moved to what we call backstop liquidity
16 providers, which are basically large market makers on the
17 exchange who signed up to accept these positions. Now if it
18 goes even further negative and the backstop liquidity program
19 is not able to actually take on these positions, then there's
20 an insurance fund that kicks in, which is basically money that
21 is set aside specifically for the purpose of covering these
22 losses that cannot be satisfied on the platform. And if that
23 insurance fund gets depleted, runs out, then there would be,
24 you know, socialized losses. But it has been FTX's consistent
25 position that they have never depleted the insurance fund, we

1 have never clawed back users, and we have no intention of
2 clawing back users as well. It was one of FTX's main marketing
3 and selling points.

4 Q. So what you just described, are those things that you heard
5 the defendant talk about?

6 A. Yes.

7 Q. And where did you hear the defendant describing FTX's
8 liquidation engine and the selling points of that engine?

9 A. So it comes up in conversations with regulators, our
10 regulators around the world who asks us about our liquidation
11 and margin programs; it comes up in questions from our users
12 who asks about, you know, how our liquidation waterfall works;
13 it's something that a lot of large traders are very much
14 focused on because many other crypto exchanges do not have a
15 good liquidation program, and FTX won a lot of customers
16 because, you know, we marketed it as having a really good
17 program, you have an insurance fund that's never been depleted,
18 we've never done clawbacks.

19 Q. I want to break that down a little bit.

20 First of all, you said this was a selling point for
21 the exchange. Why was this a selling point?

22 A. So other crypto exchanges have had a lot of these losses in
23 the past basically where you have positions stuck in the system
24 that are in the negative that they have not been able to
25 liquidate, and so what other exchanges do—and there's a whole,

1 you know, variety of ways as to how they do them—is they would
2 take people who make money in those markets and give it to the
3 people who lost money, to cover the losses. That is typically
4 known as a clawback—people who make money had their profits
5 taken away from them. And you can imagine that this is not
6 something that traders like. And so FTX prided itself on the
7 lowest rate of liquidations, on having an insurance fund, has
8 never been depleted, and not doing clawbacks.

9 Q. You talked about an insurance fund. Based on the
10 defendant's statements, what did you understand was the
11 insurance fund?

12 A. I understand that it was \$250 million sitting on the
13 ftx.com exchange and made readily available to cover losses.

14 Q. And I think you said earlier that you understood that the
15 insurance fund was money that was set aside. Why did you
16 understand that that money had been set aside?

17 A. Sorry. Why did I understand that money had been set aside?
18 It was a program created specifically for that purpose.

19 Q. And what, if anything, did the defendant tell you about how
20 the insurance fund had been used over time?

21 A. It started small, obviously, but it, you know, it grew as
22 FTX grew, and one of the key things I remember is that the
23 maximum drawdown from the insurance fund, meaning payouts to
24 cover losses from the insurance fund, is less than the profits
25 made by FTX on that day.

1 THE COURT: And just for the sake of clarification,
2 this insurance fund did not involve any insurance in the normal
3 sense of buying a policy from MetLife or John Hancock or
4 Fireman's Fund; is that right?

5 THE WITNESS: Yes, that's right.

6 THE COURT: Thank you.

7 BY MS. SASSOON:

8 Q. And just to be clear, your understanding that—can you
9 repeat your understanding about the drawdowns from the
10 insurance fund and explain that.

11 A. Sure. So when there are these losses that couldn't be
12 liquidated into the system, there would be payouts from the
13 insurance fund to cover those losses, and, you know, what I
14 learned is that the maximum payout from the insurance fund on
15 any given day, since FTX started, is less than the amount of
16 money that FTX made on that day.

17 Q. And just to be clear, where did you learn that from?

18 A. From Sam; it was written on our FTX policy website; it was
19 in a lot of our regulator communications.

20 Q. Did you personally verify that?

21 A. I did not.

22 MS. SASSOON: And if we could pull this exhibit back
23 up and look at—zoom in on 16.4, please.

24 Q. The last sentence here says, "In addition, even if you have
25 not suffered any liquidations or losses, your Account balance

1 may be subject to clawback due to losses suffered by other
2 Users."

3 In your conversations with the defendant, what, if
4 anything, did he say to you about clawbacks?

5 A. So I've not discussed the specific provision, to my
6 recollection, with Sam, but when I talked to Sam about
7 clawbacks, he's always made it clear that FTX does not claw
8 back money from users.

9 Q. And what, if anything, are you aware of that the defendant
10 said publicly about clawbacks?

11 A. That we do not claw back against users as well.

12 Q. And so you said that you don't recall discussing this
13 provision with the defendant. Did he ever say anything to you
14 that suggested he was aware of this provision?

15 MR. COHEN: Objection, leading.

16 THE COURT: Sustained.

17 Q. In your discussions with the defendant, what, if anything,
18 did he ever say to you about this provision, specifically?

19 A. I do not recall any conversations with Sam specifically
20 about this provision.

21 Q. And how does this last sentence in 16.4 compare to the
22 defendant's public statements about clawbacks?

23 MR. COHEN: Objection.

24 THE COURT: Sustained.

25 MS. SASSOON: Your Honor, he described hearing public

statements about clawbacks.

THE COURT: I understand, and he told us what he heard.

MS. SASSOON: Okay. Now we can take this down.

BY MS. SASSOON:

Q. You talked about liquidations. Did there come a time when you learned that Alameda Research was exempted from auto-liquidation?

A. Yes.

Q. When was that?

A. That was either August or September of '22.

Q. And when you learned this, what was your recollection to that?

A. I was shocked. It was—it went against everything we had told regulators, told our users about the relationship between FTX and Alameda, and I asked for it to be removed.

Q. When you asked for Alameda's exemption from auto-liquidation to be removed, what were you told?

A. I was told that the no-liquidation carveout for Alameda had never been triggered and—but Sam and Nishad did not want to remove it.

Q. And how did you know that Sam and Nishad did not want to remove it?

A. I was told by Zach Dexter.

Q. And what did you understand happened next?

1 A. I pushed for it to be removed, continuously, and we got
2 them to agree to remove it and do a couple things: (1) it would
3 be replaced by a delayed-liquidation mechanism instead of a
4 no-liquidation mechanism; (2) we were going to make it clear to
5 all of the regulators, all of our users who had been, you know,
6 misrepresented in the past, that this program is in place; and
7 (3) we were going to offer the program on a nondiscretionary
8 basis to all large market makers on the platform.

9 Q. And as far as you know, were those changes actually
10 implemented prior to November of 2022?

11 A. I had done everything on the legal side of things to make
12 it happen, but as I understand it, it was stuck on the business
13 side of things.

14 Q. So is that a no?

15 A. No. Yes. So it didn't—as far as I know, it was not put
16 in place by the time FTX collapsed in November.

17 Q. And at that point did you have any indication that as a
18 result of the exemption from auto-liquidation that Alameda was
19 using FTX customer funds?

20 MR. COHEN: Objection.

21 THE COURT: Sustained, at least as to form.

22 Q. Now, Mr. Sun, if Alameda was exempted from
23 auto-liquidation, would that have been relevant to your views
24 about the risks associated with potential losses on the
25 exchange?

1 A. Yes.

2 Q. How so?

3 A. So when losses occur, if you have a margin-leveraged
4 trading system, the way to prevent these losses is to liquidate
5 the user before their account value goes negative. So just to
6 maybe use a basic example, you have \$10,000, you get a 20,000
7 Bitcoin position. Bitcoin falls from 20,000 down to 5,000, you
8 know, normally you would have a minus 5,000 account balance.
9 Now if you're just trading on the exchange and you have a minus
10 5,000 account balance, you're not going to bring your assets
11 from out of the exchange onto the exchange just to cover that
12 hole, so the way to prevent that from happening is before your
13 account goes even a single dollar negative, when you're at
14 1.5 percent, you would liquidate that position by basically
15 selling it to other people. Now if Alameda is exempt from this
16 no liquidation—it's exempt from liquidation, that would mean
17 that Alameda could go infinitely negative and there would be
18 nothing to prevent those losses from being, you know, stuck on
19 the system.

20 Q. Now at that point when you learned about this exemption,
21 what, if anything, were you aware of with respect to Alameda
22 using customer funds?

23 MR. COHEN: Objection.

24 THE COURT: What's the objection?

25 MR. COHEN: Leading.

1 THE COURT: Overruled.

2 A. I was not aware.

3 Q. And as far as you know, were customers ever informed that
4 Alameda had been exempted from auto-liquidation?

5 A. Not to my knowledge.

6 Q. Once the terms of service that we looked at went live in
7 May of 2022, what did you do with the terms of service?

8 A. It was uploaded onto our website. It replaced the prior
9 terms of service. We notified our institutional investors of
10 the change in the terms of service, and since then, between May
11 and November, when FTX collapsed, we made a few more updates to
12 comply with local regulatory requirements.

13 Q. You mentioned institutional investors. Are those customers
14 of the exchange?

15 A. Yes.

16 Q. And what's an institutional customer?

17 A. So there are two types of customers on the exchange. One
18 is, you know, a natural person, so like an individual; the
19 other one is like corporate entity, and we typically refer to
20 those as institutional customers.

21 Q. And did your job responsibilities include some
22 communication with institutional customers of FTX?

23 A. Yes.

24 Q. What is Sculptor?

25 A. Sculptor is one of the institutional customers on the

exchange who requested changes to our terms of service.

MS. SASSOON: Mr. Imperato, can you please show the witness what's been marked as Government Exhibit 326.

Q. And do you recognize this email?

A. Yes.

Q. Are you on this email exchange?

A. Yes.

Q. And who are you communicating with on this email?

A. I was communicating with Sculptor.

MS. SASSOON: The government offers Government Exhibit 326.

THE COURT: Received.

(Government's Exhibit 326 received in evidence)

MR. COHEN: Your Honor, can we have a limiting instruction as to, other than Mr. Sun, the speakers.

THE COURT: Give me a moment to read it.

Can you enlarge it, please.

MS. SASSOON: None of this is being offered for the truth, your Honor, but just for the fact that it was said to Sculptor.

THE COURT: That resolves your objection, doesn't it, Mr. Cohen?

MR. COHEN: It does, your Honor. Thank you.

THE COURT: Okay. Received on that basis.

BY MS. SASSOON:

1 Q. Mr. Sun, do you—

2 MS. SASSOON: Mr. Imperato, can you please publish
3 Government Exhibit 326.

4 Q. And Mr. Sun, do you see that this is an email thread on
5 May 13, 2022?

6 A. Yes.

7 Q. And who generally are the participants in this email
8 exchange?

9 A. So generally speaking, when a customer requests
10 modifications to our terms of service, they would reach out to
11 our institutional BD team, who would then refer it either to
12 myself or someone else on the legal team.

13 Q. And so are you on this email exchange?

14 A. Yes.

15 Q. And are there representatives of Sculptor on this email
16 exchange?

17 A. Yes.

18 Q. May 13, 2022, what happened on that date?

19 A. Our new terms of service was published that became the
20 governing terms of service going forward.

21 Q. And if I could direct your attention to the bottom email
22 from cansun@ftx.com. On May 13, 2022, you wrote, "Hi, Elise."
23 Where did Elise work?

24 A. Sculptor.

25 Q. And in this email, you wrote, "Our new terms of service

1 just went online today." And what is the link that you
2 included there?

3 A. That is the link to our new terms of service.

4 MS. SASSOON: And we can take that down.

5 At this time, Mr. Imperato, can you show the witness
6 what's marked as Government Exhibit 514.

7 Q. Who are the participants in this email exchange, Mr. Sun?

8 A. This is Sculptor and someone from the legal team, Adrian.

9 MS. SASSOON: Your Honor, the government offers
10 Government Exhibit 514, not for its truth.

11 MR. COHEN: May we be heard at the sidebar, your
12 Honor?

13 THE COURT: Yes. But somebody please bring up a hard
14 copy.

15 (Continued on next page)

(At the sidebar)

THE COURT: What's the issue here?

MR. COHEN: Your Honor, we would object to this, the admission of Government Exhibit 514. It's very different from the one that was just admitted, 326. Mr. Sun is not on this document at all. And there may well be, and I think there are, hearsay issues as to it, but more importantly—

THE COURT: It's not offered for the truth. That was the first thing.

MR. COHEN: Okay. But more importantly, your Honor, this is about a different set of policies issued by a different entity, FDM.

THE COURT: A different entity?

MR. COHEN: There was a newly created Bahamas entity called FDM, which was not FTX International, the company we've been talking about in this case. These were different policies issued by a different entity that—and it's an email chain which Mr. Sun is not on. I believe the government is going to try to argue that these policies also should be considered either construing the set of policies we just looked at or on their own, and we submit that under 403 it would be both confusing for the jury to be dealing with policies issued by different corporate entities perhaps for a different purpose that Mr. Sun was—on an email he wasn't on, and also substantially prejudicial to my client. So that's the

1 objection.

2 MS. SASSOON: Your Honor, FTX Digital Markets was the
3 Bahamian entity created with respect to the ftx.com exchange.
4 Sculptor is a customer of the ftx.com exchange. These are
5 statements by representatives of FTX to a customer referring to
6 policies that Mr. Sun will be able to explain what they are.
7 He's not on this email, but all I'm going to ask him are about
8 what these policies are, and I'm going to show him those
9 policies, and those were policies that governed the ftx.com
10 exchange.

11 MR. COHEN: They were policies that governed the new
12 company, your Honor, as to which there's been no testimony as
13 to the existence or relationship of.

14 THE COURT: I just heard a proffer that he's going to
15 testify that they're on the ftx.com exchange.

16 MR. ROOS: Didn't he say the new terms of service were
17 for that entity?

18 MS. SASSOON: That was FTX Trading. But before we
19 admit it, I can ask him what's FTX Digital Markets, and based
20 on his answer, if your Honor is satisfied, then we can offer
21 this exhibit.

22 THE COURT: Well, let's take it a step at a time.

23 MR. COHEN: This exchange points out how confusing
24 this is under 403. So—

25 THE COURT: I'm not confused yet.

1 MR. COHEN: You're not confused, your Honor, but I
2 think the rest of us are.

3 THE COURT: Okay.

4 (Continued on next page)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (In open court)

2 THE COURT: Proceed.

3 MS. SASSOON: Mr. Imperato, let's pull back up
4 Government Exhibit 326 just for a moment.

5 BY MS. SASSOON:

6 Q. And Mr. Sun, I want to direct your attention to your email
7 at the bottom. And in this email to Sculptor on May 13, 2022,
8 you wrote, "we've actually just changed the operating entity
9 for ftx.com to our Bahamas DARE Act-licensed entity FTX Digital
10 Markets Ltd." So can you explain what FTX Digital Markets Ltd.
11 was.

12 A. It's our Bahamian subsidiary that was licensed under the
13 Bahamian DARE Act. Under the new terms of service, that was
14 going to be the default and predominant entity that serviced
15 our customers going forward.

16 Q. So just to be clear, how did FTX Digital Markets relate to
17 ftx.com?

18 A. It is the entity providing the bulk of the services that
19 are available to users on ftx.com.

20 MS. SASSOON: We can pull that down now.

21 And Mr. Imperato, can you pull back up Government
22 Exhibit 514, just for the witness.

23 And at this time the government offers Government
24 Exhibit 514.

25 MR. COHEN: Same objection.

1 THE COURT: Overruled.

2 (Government's Exhibit 514 received in evidence)

3 MS. SASSOON: Mr. Imperato, can you please publish
4 this exhibit for the jury.

5 BY MS. SASSOON:

6 Q. Now just to be clear, Mr. Sun, are you on this email
7 exchange?

8 A. I am not.

9 Q. Who is Adrian Guye?

10 A. He is a member of our legal team.

11 Q. And Elise Knaus, does she work at Sculptor?

12 A. Yes.

13 Q. And do you see in Adrian's June 23, 2022, email to Elise,
14 he wrote, "Please find attached the FTX Digital Markets
15 policies that I can share with you," and a little farther down,
16 he wrote, "as reflected in the attached safeguarding of assets
17 policy"?

18 A. Yes, I see that.

19 Q. Were you familiar with the safeguarding of assets policy?

20 A. Yes.

21 Q. And what was it?

22 A. It's one of the policies that we put together and was
23 required to be bound by under our Bahamian license to safeguard
24 and protect customer assets.

25 Q. And do you see at the end of that paragraph Adrian Guye

1 wrote, "As further reflected in this policy under safeguarding
2 and segregation, in the unlikely event that FDM becomes
3 insolvent, customer funds will be ring-fenced from such
4 insolvency"? First of all, what does FDM stand for?

5 A. FDM stands for FTX Digital Markets Ltd., our Bahamian
6 subsidiary.

7 Q. What does it mean to ring-fence customers from insolvency?

8 A. Keep it separate and segregated so in the event of an
9 insolvency in FTX Digital Markets, FTX Digital Markets's
10 customers will be able to receive their funds back.

11 (Continued on next page)

1 Q. Just to be clear, when you say FDM's customers, how does
2 that relate to FTX.com's customers?

3 A. They are the same.

4 Q. Now you are not on this email, but is that sentence there,
5 how does that relate to what your understanding was about --

6 MR. COHEN: Objection.

7 THE COURT: Sustained.

8 Q. What, if any, understanding did you have, separate and
9 apart from this email, about what would happen to customer
10 funds in the event of insolvency?

11 A. It would be fully protected and segregated and returned to
12 customers.

13 MS. SASSOON: We can take that down. Mr. Imperato, if
14 you can pull up for the witness.

15 THE COURT: I'm sorry. Let me just --

16 Was that true in your mind with respect to FTX Digital
17 Markets, FTX.com, or both?

18 THE WITNESS: It would be both. If FDM -- FTX Digital
19 Markets, the payment subsidiary, provides the bulk of the
20 services that are available on FTX.com.

21 THE COURT: Explain what that means to the jury.

22 THE WITNESS: There are a number of services available
23 on FTX.com. Not all of them are provided by FTX Digital
24 Markets Limited. We are a Bahamian subsidiary. For instance,
25 if you are from Japan or Australia and you were trading on

1 FTX.com, you were not serviced by FTX Digital Markets. You
2 were serviced by our Japan and Australian subsidiaries.

3 THE COURT: Would it be fair to say that the legal
4 department that dealt with all of this dealt with it for all
5 these FTX companies?

6 THE WITNESS: Yes, for the most part. We don't
7 practice local law, your Honor, obviously.

8 THE COURT: Local law meaning, for example, the
9 Bahamas.

10 THE WITNESS: Bahamas, Japan, Australia, yup.

11 THE COURT: Were the people supervising the services
12 provided by these various entities the same?

13 THE WITNESS: For the most part, we have in each
14 jurisdiction wherever you are licensed a local team as well to
15 make sure that whatever we do locally is also in compliance
16 with local laws.

17 THE COURT: Go ahead.

18 MS. SASSOON: Mr. Imperato, can you please pull up
19 Government Exhibit 340 for the witness.

20 Q. Do you recognize this?

21 A. Yes.

22 Q. What is it?

23 A. This is the safeguarding of assets and digital management
24 policy.

25 Q. Did this apply to FTX.com?

1 A. Yes.

2 Q. As general counsel, did you review this?

3 A. Yes.

4 Q. And did this document go through an approval process?

5 A. Yes.

6 Q. For what purpose?

7 A. This was one of the documents for our Bahamian license
8 application, so it had to be approved by the CEO and typically
9 approved by the board as well.

10 Q. When you say it had to be approved by the CEO, who was the
11 CEO?

12 A. It was Ryan Salame.

13 Q. What about the board, who was on the board?

14 A. It was Ryan, Sam. I think we might have added Nishad later
15 down the road, but I can't remember exactly when.

16 Q. But Sam Bankman-Fried was on the board that would approve
17 these policies?

18 MR. COHEN: Objection. Leading.

19 THE COURT: Sustained in that form.

20 Q. When you said Sam was on the board, which Sam are you
21 referring to?

22 A. Sam Bankman-Fried.

23 MS. SASSOON: The government offers Government Exhibit
24 340.

25 MR. COHEN: Same objections as made at the sidebar,

1 your Honor.

2 THE COURT: Overruled. It's received.

3 (Government Exhibit 340 received in evidence)

4 Q. I just want to clarify. You said Ryan Salame was CEO. CEO
5 of what entity?

6 A. FTX Digital Markets Limited, our Bahamian subsidiary.

7 MS. SASSOON: Mr. Imperato --

8 THE COURT: Excuse me.

9 Who owned the shares of digital markets, the Bahamian
10 subsidiary?

11 THE WITNESS: It was owned 100 percent by FTX Trading
12 Limited, our holding company in Antigua.

13 THE COURT: Who owned the shares of that entity?

14 THE WITNESS: So Sam has a majority, followed by Gary
15 Wang and Nishad Singh.

16 THE COURT: Thank you.

17 Let's go on.

18 MS. SASSOON: Mr. Imperato, can you publish Government
19 Exhibit 340.

20 Q. Looking at this cover page, can you read the title of this
21 document.

22 A. FTX Digital Markets Limited, safeguarding of assets and
23 digital token management policy.

24 Q. At a high level, what is this document?

25 A. This sets out the policies and processes by which FTX

1 Digital Markets Limited safeguards customer assets.

2 Q. Was this a document that was shared with FTX customers?

3 A. Not to my knowledge. So there are some cases where an
4 investor -- sorry -- a user could potentially ask, but it is
5 not a document that is generally made available to users.

6 Q. Just to be clear, was it sometimes made available to users?

7 A. Yes.

8 MS. SASSOON: Let's go to page 4.

9 Q. Can you read the first sentence beneath introduction.

10 A. This policy outlines FDM's approach to the safeguarding of
11 assets.

12 Q. Under the objectives section, what is the first bullet
13 point under this policy's objectives are to?

14 A. Emphasize our stringent commitment to safeguarding assets
15 belonging to both FDM and its customers.

16 MS. SASSOON: Let's go to page 5.

17 Q. Do you see where it says FDM's responsibilities?

18 A. Yup.

19 Q. What does it say beneath that?

20 A. Appropriately account for the difference between its own
21 assets and its customers' assets.

22 Q. Sorry. The sentence right beneath the header, FDM's
23 responsibilities.

24 A. FDM is ultimately responsible for the safeguarding of its
25 customers' assets.

1 Q. Do you see beneath that it says: FDM's key roles and
2 responsibilities in relation to safeguarding of assets are
3 outlined below.

4 Now, can you read the first bullet beneath that.

5 A. Appropriately account for the difference between its own
6 assets and its customers' assets.

7 Q. And can you read the third bullet.

8 A. All third-party providers are aware that customer assets
9 are held in trust.

10 Q. What does it mean for assets to be held in trust?

11 A. It means that you hold them, that you are not the
12 beneficial owner of them, and you are holding it for the
13 benefit of someone else; in this case, customers.

14 MS. SASSOON: Let's go to page 7.

15 Q. Do you see the section entitled safeguarding and
16 segregation?

17 A. Yes.

18 MS. SASSOON: Can you please, Mr. Imperato, zoom in.

19 Q. Mr. Sun, can you read the first sentence below that
20 heading.

21 A. FDM has a responsibility to ensure that customer assets are
22 appropriately safeguarded and segregated from its own funds.

23 Q. Can you read the first bullet, please.

24 A. Customer assets, both fiat and virtual assets, are
25 segregated from its own assets.

1 MS. SASSOON: Can you highlight, Mr. Imperato, the
2 sentence after the bolded words SCB where it says: Customer
3 accounts will be designated as such, and the money contained
4 therein will be appropriately ring-fenced and protected from
5 claims against FDM.

6 Q. Can you remind us what it means to appropriately
7 ring-fenced assets from claims against FDM?

8 A. Sure. Customer assets belongs to the customer. When they
9 come in, they are kept in separate accounts, protected and
10 separate from FDM OR FTX's own assets, so that if FTX or FDM
11 has a bankruptcy event, customer assets, which belongs to the
12 customer, does not belong to FTX, will be returned to
13 customers.

14 Q. What, if any, conversations did you have with the defendant
15 about the subject matters that we have just been looking at
16 related to protection of customer assets?

17 A. In all my conversations with Sam, it has always been
18 represented to me that customer assets are protected,
19 segregated, as set out in the policy.

20 MS. SASSOON: You can take that down.

21 Mr. Imperato, can you please show the witness
22 Government Exhibit 26. Can you go to the series B tab.

23 Q. Do you recognize this spreadsheet, Mr. Sun?

24 A. Yes.

25 Q. What is it?

1 A. This is a spreadsheet that was maintained in connection
2 with our fundraisers. So each of the tabs, series B, B1, C,
3 C1, those are different rounds of fundraising that we have been
4 doing, and in each of these tabs it lists the name of the
5 investor, their contact information, and so on and so forth.

6 Q. As general counsel, did you review the spreadsheet?

7 A. Yes.

8 Q. And were you familiar with the content?

9 A. Yes.

10 MS. SASSOON: The government offers Government Exhibit
11 26.

12 MR. COHEN: No objection.

13 THE COURT: Received.

14 (Government Exhibit 26 received in evidence)

15 MS. SASSOON: Mr. Imperato, if we can publish this to
16 the jury and stay on the series B tab where you have it.

17 Q. Now that the jury has the benefit of seeing the
18 spreadsheet, can you explain what series B refers to.

19 A. So series B was our fundraising round that was completed in
20 July of 2021, before I joined. So this is basically a
21 fundraising event whereby investors invest money into FTX and
22 in return get shares in the company.

23 Q. Do you see the column A that says name?

24 A. Yes.

25 Q. What is listed under name?

1 A. That is the name of the investor.

2 Q. Can you just read the first nine names there.

3 A. Sequoia, Paradigm Capital, Thoma Bravo, Soft Bank, Third
4 Point LLC, Insight Partners, Robbitt Capital, Lightspeed
5 Venture Partners.

6 Q. You can stop there.

7 Were the names you read and the ones following
8 investors in FTX?

9 A. Yes.

10 MS. SASSOON: If we can scroll to column R.

11 Q. Do you see this column where it says amount?

12 A. Yes.

13 Q. What does this refer to?

14 A. That is the amount of money that they invested into FTX.

15 Q. The next tab is called series B1. What does that refer to?

16 A. That is our subsequent investment round that was completed
17 in October of 2021.

18 Q. And the first name here is OTPP. What does that stand for?

19 A. Ontario Teachers' Pension Plan.

20 Q. Can you read the name of the investor in row 5.

21 A. Temasek.

22 Q. There is another tab here called series C. What does that
23 refer to?

24 A. That was our next fund-raising round that was completed in
25 January of 2022.

1 Q. So here the first two names are Paradigm and Temasek, which
2 we saw in earlier tabs. What does that mean that they are
3 reappearing here?

4 A. That they invested a gain into FTX at the new round.

5 Q. You see that there is a tab called series C1. What is
6 that?

7 A. That is -- that was a round that we started in, I think,
8 late summer and fall of 2022, but it never closed.

9 Q. When you say it never closed, what does that mean?

10 A. So the investors did not actually put money into FTX.

11 Q. As general counsel, did you participate in any
12 conversations with FTX investors?

13 A. Yes.

14 Q. And what, if anything, did you tell investors about the
15 relationship between FTX and Alameda?

16 MR. COHEN: Objection.

17 THE COURT: Ground.

18 MR. COHEN: Hearsay.

19 MS. SASSOON: Not offered for its truth, your Honor.

20 THE COURT: Of course. Overruled.

21 A. Consistently told our investors that FTX and Alameda are
22 two fully independent and separate companies.

23 Q. Where did you get that information from when you told
24 investors that FTX and Alameda were two separate companies?

25 A. Based on representations made to me by Sam.

1 Q. I want to talk about investments for a moment. What
2 involvement, if any, did you have with venture investments by
3 the defendant?

4 A. From time to time, there would be investments that needed
5 legal support, and sometimes I was brought in to help to review
6 investment negotiation investment agreements.

7 Q. At all times prior to November 2022, what did you believe
8 about where the money came from for these investments?

9 A. That it was all profits of Alameda, basically house money
10 that was made by Alameda.

11 Q. What, if anything, did anyone ever tell you about whether
12 the investments involved customer money?

13 A. Nothing whatsoever.

14 Q. And what role, if any, did you have with any loans from
15 Alameda to parties related to the company of FTX?

16 A. Yes. I documented a series of loans made by Alameda to
17 Sam, Gary, Nishad, and others.

18 Q. Can you describe what you did.

19 A. Yes. So it generally happens in two ways.

20 MR. COHEN: Can we have a time frame, your Honor?

21 THE COURT: Yes.

22 Q. Over what time period did you document loans for Sam and
23 others?

24 A. From the time when I joined FTX in late August '21 until
25 the collapse in November '22, throughout my time there.

1 Q. Throughout your time there, can you describe your
2 involvement in documenting loans?

3 A. Sure. These loans typically come up in two ways.

4 One way is, if I were working on a transaction myself,
5 such as an acquisition, and we needed certain funds in order to
6 close the transaction, I would go to Sam or other members of
7 management and say, hey, we need a capital injection in order
8 to close this transaction.

9 The second way it comes up is, if there is a
10 transaction that I'm not working on but apparently needs a
11 capital injection, then Sam or someone will pull me aside and
12 say, hey, we need to put X amount of dollars of a capital
13 injection into one of these companies.

14 Q. What were you told, if anything, about why these
15 investments were being funded through loans to the defendant
16 and others?

17 A. So the way that these loans were structured was in place
18 when I joined, and even after I joined we had worked with
19 outside counsel on structuring these loans. So all of the
20 loans I worked on came -- the lender was Alameda and the
21 borrower was typically Sam, Gary, Nishad.

22 So what would happen is, let's say there is a need for
23 a \$250 million injection into FTX.US, which was the case in
24 December '21, when FTX.US needed that for its CFTC margin
25 application, I would discuss with Sam how to make the capital

1 injection, and the preferred way of doing it is to have Alameda
2 make a personal loan to each of the founders, Sam, Gary, and
3 Nishad, and then they would actually invest the funds into FTX
4 US in the form of an investment.

5 Q. What was your view of this practice that you were involved
6 in?

7 A. I had no idea that customer funds were being used. We had
8 worked with outside counsel on structuring these transactions.

9 Sorry. Your question?

10 Q. Can you describe what was your view of just the practice of
11 using loans to the defendant to fund investments?

12 A. Under the circumstances, back then, we did not know it was
13 customer funds, and we worked with outside counsel on it, and
14 we thought it was legal and it was fine to do that.

15 Q. Did you have any views beyond that?

16 A. Yes. It was probably -- from an optics perspective, it was
17 probably not the most transparent, but under those
18 circumstances back then we did not know it was customer funds.

19 MS. SASSOON: Your Honor, at this time I would ask
20 permission to hand the witness a binder which has within it
21 Government Exhibits 211, 225, 236 through 242, and what's
22 already in evidence as Defense Exhibits 15, 16, 20, 22 through
23 24, 34, 184, and 211.

24 THE COURT: You can hand him the binder.

25 MS. SASSOON: Thank you.

1 Q. Mr. Sun, do you recognize this binder?

2 A. Yes.

3 Q. How do you recognize it?

4 A. The initial on the cover.

5 Q. What's inside this binder?

6 A. These are series of loans that I documented from Alameda to
7 the founders.

8 MS. SASSOON: The government offers Government
9 Exhibits 211, 225 and 236 through 242.

10 THE COURT: Received.

11 (Government Exhibits 211, 225 and 236-242 received in
12 evidence)

13 MS. SASSOON: Let's just take one example.

14 Mr. Imperato, can you please pull up Government
15 Exhibit 236. If you can zoom to the first paragraph and
16 everything above that.

17 Q. You see here it says promissory note. Is that a loan?

18 A. Yes.

19 Q. What's the date of this loan?

20 A. April 30, '22.

21 Q. Who is the recipient?

22 A. Sam Bankman-Fried.

23 Q. What's the amount of this loan from Alameda to Sam
24 Bankman-Fried?

25 A. \$369,667,182.50.

1 Q. Is this an example of a loan that you were involved in
2 documenting while general counsel?

3 A. Yes.

4 Q. You mentioned a few times not knowing anything about use of
5 customer funds. Would you have documented loans that involved
6 the use of customer funds?

7 MR. COHEN: Objection.

8 THE COURT: I will allow that. Overruled.

9 A. Absolutely not.

10 Q. What awareness, if any, did you have of loans to Ryan
11 Salame?

12 A. There were three loans that were documented to Ryan.

13 Q. Apart from three loans that you documented to Ryan Salame,
14 were you told anything about any other loans to Ryan Salame?

15 A. I was not.

16 MS. SASSOON: Can we show the witness what's been
17 marked as Government Exhibit 79.

18 Q. Do you recognize this?

19 A. Yes.

20 Q. What is it?

21 A. This is the spreadsheet that I maintained to keep track of
22 all of the loans.

23 Q. Did you maintain this as the loans were being documented?

24 A. Yes.

25 MS. SASSOON: The government offers Government Exhibit

79.

MR. COHEN: No objection.

THE COURT: Received.

(Government Exhibit 79 received in evidence)

MS. SASSOON: Mr. Imperato, if you can publish this, please.

Q. Now that the jury can see it, can you explain what this spreadsheet is.

A. Sure. So this includes -- on a row-by-row basis every single row is a loan that I documented. The amount of the loan is in column D. The borrower is column B. The lender in all of these was Alameda. And the purpose of each loan is described in column A.

MS. SASSOON: If we could scroll down to see how many rows are here. This goes down to row 35.

Q. How does the content here relate to the total loans that you were involved in documenting?

A. So all of the loans that came through my desk that I handled is documented on these except for two personal loans that was part of a management incentive program for two employees, including myself, to purchase property in the Bahamas, but everything else is on here.

Q. Apart from those loans that you just mentioned that are not on here, does this spreadsheet reflect the total amount of the loans that you were involved in documenting?

1 A. Yes.

2 Q. And where is that?

3 A. Cell D38, 2.17 billion.

4 Q. Apart from these loans that you were involved in
5 documenting, were you informed of other loans to Gary, Nishad,
6 and Sam?

7 A. No. All the loans I was aware of that I documented is on
8 the spreadsheet.

9 MS. SASSOON: We can take that down.

10 At this time the government offers Government Exhibit
11 141A, which the parties have stipulated is an excerpt from the
12 Alameda Research general ledger, dated November 13, 2022.

13 MR. COHEN: No objection.

14 THE COURT: Received.

15 (Government Exhibit 141A received in evidence)

16 MS. SASSOON: Mr. Imperato, if you can publish that,
17 please.

18 Q. Mr. Sun, prior to your meetings with the government, had
19 you seen this document before?

20 A. No, I had not.

21 MS. SASSOON: Mr. Imperato, if you can zoom in on the
22 top half.

23 Q. Do you see a number of transaction types labeled expense
24 that are described as outgoing money transfers to Samuel
25 Bankman-Fried?

1 A. Yes.

2 Q. In your time as general counsel, had you been aware of
3 these transfers?

4 A. If they are not on my spreadsheet, I was not aware of them.

5 Q. Do you see the column called amount?

6 A. Yes.

7 Q. Just taking an example, do you see a September 16, 2022
8 transfer to Sam Bankman-Fried in the amount of \$4 million?

9 A. Yes.

10 Q. And were you aware of that transfer?

11 A. I was not.

12 Q. As far as you know, were any of these transfers documented
13 in any form of promissory note or loan?

14 A. No, they were not documented.

15 MS. SASSOON: If we could zoom in on the bottom half
16 of this document.

17 Q. Do you see here a number of transfers to Ryan Salame in the
18 millions of dollars?

19 A. Yes.

20 Q. Do any of these look familiar to you?

21 A. No. These do not look like any of the loans that are
22 documented for Ryan.

23 MS. SASSOON: We can take that down.

24 Q. Mr. Sun, did you personally get any loans from Alameda? I
25 think you mentioned one.

1 A. Yes, I did.

2 Q. And besides that one, did you receive any others?

3 A. No. That was the only loan I got.

4 Q. What was the amount of that loan?

5 A. 2.3 million.

6 Q. And for what purpose did you receive that loan?

7 A. As part of a management incentive program to incentivize
8 employees to move to the Bahamas. A hundred percent of it was
9 used for the purchase of a house in the Bahamas.

10 Q. When you got that loan, where did you think that money was
11 coming from?

12 A. Alameda's own money, profits.

13 Q. Mr. Sun, did you enter any agreements with the government
14 prior to your testimony today?

15 A. Yes.

16 Q. What type of agreement?

17 A. A nonprosecution agreement.

18 Q. What's your understanding of your obligations under the
19 nonprosecution agreement?

20 A. That I shall speak the truth.

21 Q. What, if anything, do you understand the agreement to
22 provide in return?

23 A. That I will not be prosecuted by the government if I speak
24 the truth.

25 Q. Did you request a nonprosecution agreement from the

1 government?

2 A. Yes.

3 Q. Why?

4 A. I had no idea that customer funds were being used. I
5 didn't do anything wrong. As general counsel I was involved in
6 transactions that now, in hindsight, may have involved the
7 misappropriation of customer funds, so, out of an abundance of
8 caution, I asked the government for protection.

9 MS. SASSOON: Your Honor, I have one more section. I
10 can continue and finish and then we can take a break, or we can
11 take a break now, whatever you prefer.

12 THE COURT: How long a section is it?

13 MS. SASSOON: Maybe 15 minutes.

14 THE COURT: Let's get it done.

15 Q. I want to talk to you about November of 2022, Mr. Sun.

16 Did there come a time in November 2022 when you
17 assisted in efforts to raise capital for FTX?

18 A. Yes.

19 Q. Who did you try to raise capital from?

20 A. Apollo Capital.

21 Q. What is Apollo Capital?

22 A. It's a large investment fund.

23 Q. What was your role in discussions with Apollo about raising
24 money for FTX?

25 A. So it was on the afternoon of November 7, at around 1 p.m.,

1 I was asked to join a call with Apollo without much context.
 2 There was myself and Ramnik, our head of product, and they
 3 asked for Apollo -- for them to invest in FTX to help solve a
 4 liquidity problem that FTX had for customer withdrawals.

5 Q. Did your discussions with Apollo involve reference to any
 6 documents?

7 A. Yes. So on the call with Apollo that we had, they asked
 8 for a copy of FTX's financial statements describing FTX's
 9 financial condition. Neither Ramnik for myself had that
 10 information, so we took that offline and prepared that after
 11 the call.

12 Q. And so was a spreadsheet prepared with some financial
 13 information?

14 A. Yes. So what happened after the call is, neither Ramnik
 15 nor myself had that information. We sat down in a room and
 16 asked for that information. After about 30, 45 minutes or so,
 17 I got a spreadsheet from either Sam or Ramnik that included
 18 various financial information relating to FTX and Alameda.

19 Q. Where were you when you received this spreadsheet with
 20 information about FTX and Alameda?

21 A. I was in an apartment in Albany in the Bahamas.

22 Q. Just to be clear, you said you were in an apartment in
 23 Albany. What's Albany?

24 A. Albany is an apartment complex situated at the southwestern
 25 end of the Bahamas.

1 Q. Who were you with you when you received the spreadsheet at
2 the apartment in Albany?

3 A. There was Sam, Nishad, Ramnik, and Joe.

4 Q. Did you review the spreadsheet in the presence of those
5 individuals?

6 A. Yes.

7 Q. What, if anything, did you learn in looking at this
8 spreadsheet?

9 A. I was shocked because it showed that FTX was short \$7
10 billion to satisfy customer withdrawals, and there was a
11 separate tab in that spreadsheet that showed the amounts of
12 money that Alameda could return to FTX to satisfy customer
13 withdrawals.

14 Q. Why did that information shock you?

15 A. Because as we have talked about, it has been my
16 understanding throughout my time at FTX that FTX has
17 safeguarded, segregated customer assets, that we do not misuse,
18 we do not touch customer assets. So -- and not just Alameda,
19 but anyone. So when there is a \$7 billion deficit and FTX
20 relied on Alameda to return money to be able to plug in that
21 hole, I was shocked.

22 Q. So as you are reviewing this spreadsheet in the Albany with
23 Sam, Nishad, and others, what, if anything, were you saying?

24 A. I was asking questions. I was asking questions about how
25 the arithmetic was calculated. The way that the Excel

1 spreadsheet was set up was not straightforward. I asked about
2 different line items, how those were calculated. But I did not
3 get straight responses.

4 Q. You said you were not getting straight responses. How, if
5 at all, was anyone responding to you?

6 A. Most often I was throwing a question out there and no one
7 was responding. And sometimes when I asked a question about,
8 for instance, whether this line item is inclusive or exclusive
9 of certain other line items, I would get a very vague answer.

10 Q. What was the defendant doing while you were asking these
11 questions about the spreadsheet?

12 A. Sam was in a room, he was typing away on his computer, and
13 after a while he stepped out to make some calls.

14 Q. What about Nishad?

15 A. Nishad was sitting there. His entire face was pale, gray.
16 It looked like his soul had been plucked away from him.

17 Q. What did you conclude from reviewing this spreadsheet?

18 MR. COHEN: Objection.

19 THE COURT: Sustained at least as to form.

20 Q. What views, if any, did you form in reviewing the
21 spreadsheet?

22 A. I had a growing suspicion that FTX did not have the
23 customer money and that it had been misappropriated most likely
24 by Alameda.

25 Q. Did you share this information with Apollo?

1 A. We shared the spreadsheet with Apollo.

2 Q. What happened after that?

3 A. About an hour or two after we sent out the spreadsheet, Sam
4 pulls me aside and he says he heard an update from Apollo.

5 They asked him for a legal justification as to why the funds
6 were missing and were at Alameda, and he asked me to come up
7 with legal justifications.

8 Q. Once the defendant asked you to come up with legal
9 justifications about the missing funds, what do you understand
10 had happened to the customer funds?

11 A. I mean, basically confirmed my suspicion that had been
12 rising all day that FTX did not have the funds to satisfy
13 customer withdrawals and that they had been misappropriated by
14 Alameda.

15 Q. And this conversation with the defendant where he asked you
16 to come up with a legal justification, where did it take place?

17 A. In the same Albany apartment.

18 Q. And in that conversation did the defendant identify any
19 legal justifications that he was aware of?

20 A. No.

21 Q. And in that moment did either of you provide a legal
22 justification?

23 A. No.

24 Q. What, if anything, did the defendant tell you in that
25 conversation had actually happened with the customer money?

1 A. He did not say anything about that.

2 Q. After this conversation where the defendant asked you to
3 come up with a legal justification, did you explore possible
4 legal justifications for the missing customer money?

5 A. Yes.

6 Q. And did you come to any conclusions?

7 A. Yes. That there were no legal justifications for the money
8 being taken away.

9 Q. Did you have a subsequent discussion with the defendant
10 about those conclusions?

11 A. Yes.

12 Q. Where did that conversation take place?

13 A. So it was right around 7:00 that evening, November 7. It
14 was still in the same Albany apartment. And Sam pulls me aside
15 and says he is talking to Apollo in 10, 15 minutes. He asked
16 me to go on a walk with him. I go on a walk with him and
17 basically tell him that there was no legal justification for
18 the funds being missing and taken by Alameda. I did tell him
19 that there were theoretical arguments, but none of them was
20 supported by the facts.

21 Q. You just testified that you told the defendant there were
22 some theoretical arguments but none were supported by the
23 facts. Did you walk through those theoretical arguments with
24 the defendant during this walk?

25 A. Yes.

1 Q. And what was the first one that you spelled out for the
2 defendant?

3 A. The first argument is section 9 of our terms of service
4 which deals with dormancy, or otherwise known as abandoned
5 property.

6 What happens is, if there is a prolonged period of
7 time where FTX is not able to contact the customer, then in
8 that scenario FTX would be able to charge a dormancy fee for
9 administering the user's funds.

10 Q. What, if anything, did you tell the defendant about whether
11 this was an adequate legal justification?

12 A. Yes. I told Sam that this would not justify the amount
13 that was taken away by Alameda.

14 Q. Why not?

15 A. The amount of active users on the exchange was very few,
16 and FTX had only been around since 2019, so the amount of funds
17 that we could even call dormant is very little.

18 Q. I just want to be clear. When you said certain users or
19 very few, did you say active or inactive?

20 A. Sorry. Inactive users with large account balances.

21 Q. Were what?

22 A. Very few.

23 Q. How did the defendant respond to what you said?

24 A. He acknowledged it.

25 Q. How did he acknowledge it?

1 A. Yup, yup.

2 Q. I'm sorry. When you just went yup, yup, is that what he
3 was saying?

4 A. Yes. That is what Sam said.

5 Q. And did you raise any other potential arguments with the
6 defendant on this walk?

7 A. Yes. The second theoretical argument is section 16 of our
8 terms of service, which provides that if a user voluntarily
9 affirmatively chooses to lend out their money to other users on
10 the platform, then if the borrower then defaults and unable to
11 return the money, then the lender's money is gone.

12 Alternatively, also under section 16 of our terms of
13 service, if a user decides to take his assets and use it as
14 collateral to trade on leverage, then he is pledging those
15 collateral -- pledging his assets as collateral to trade on
16 margin, and if he or she is liquidated, then those assets will
17 be taken away as well.

18 Q. What, if anything, did you explain to the defendant about
19 whether this argument was supported by the facts?

20 A. I had previewed this argument with Nishad and Ramnik before
21 the walk, and they had pulled some numbers that showed that it
22 was not supported by the facts as well.

23 Q. Did you relay that to the defendant?

24 A. Yes.

25 Q. And how did he respond to that?

1 A. He acknowledged as well.

2 Q. How did he acknowledge it?

3 A. He said yup, yup.

4 Q. Were there any other theoretical arguments you described to
5 the defendant?

6 A. Yes. There was a third one, which is some crypto exchanges
7 do not make it clear what is the relationship between a user
8 when they deposit funds onto the exchange and the exchange. I
9 told him that unfortunately that is not even feasible for us
10 because our terms of service make it very clear that when a
11 user deposits assets onto the exchange, those assets continue
12 to belong to the user.

13 Q. Did the defendant respond to this explanation?

14 A. Yes. He acknowledged as well.

15 Q. Did you offer any other theoretical arguments, or was it
16 primarily those three?

17 A. It was those three.

18 Q. Once you walked through those three arguments on this walk,
19 how did the defendant react to what you had told him?

20 A. I was actually expecting a bigger response, but it was very
21 muted. Sam basically said something like, got it. He was not
22 surprised at all.

23 Q. Did the defendant push back on what you said?

24 A. No.

25 Q. I couldn't hear you.

1 MR. COHEN: Objection.

2 THE COURT: Couldn't hear the answer.

3 A. No.

4 THE COURT: Overruled, Mr. Cohen.

5 Q. During this discussion, what, if any, of his own
6 justifications did the defendant provide?

7 A. I do not recall any.

8 Q. That same day did you have any conversations with Nishad
9 Singh?

10 A. Yes.

11 Q. What do you recall about that?

12 A. It was later that evening, around 11 p.m., Nishad pulled me
13 aside, and we went for a quick walk around the building as
14 well. Nishad basically asked me about his personal exposure,
15 about the loans he had taken from FTX, about the bonuses that
16 he had received. The one thing he had mentioned as well is
17 that the no-liquidation mechanism that Alameda had is also the
18 same mechanism by which Alameda was able to withdraw customer
19 assets from the exchange.

20 Q. Had you known that before this conversation with Nishad?

21 A. No, I did not.

22 Q. What, if anything, did Nishad tell you about his prior
23 conversations with the defendant?

24 A. Yes. He said that he found out about the hole, basically
25 that Alameda was taking FTX customer assets in late summer of

1 '22, so August or September of 2022. He said that he talked
2 to -- he confronted Sam directly about it, and Sam told him
3 back then that it is what it is and there is nothing we can do
4 about it. The only thing we can do is to grow the company and
5 fill in the hole.

6 Q. When did you leave FTX?

7 A. The next day.

8 Q. Under what circumstances?

9 A. I resigned.

10 MS. SASSOON: At this time the government offers
11 Government Exhibit 923B, which the parties have stipulated is
12 an excerpt from a Good Morning America interview with Sam
13 Bankman-Fried, dated December 1, 2022.

14 THE COURT: Received.

15 (Government Exhibit 923B received in evidence)

16 MS. SASSOON: Mr. Imperato, if you can please play
17 this interview excerpt from December 1, 2022 for the jury.

18 (Video played)

19 Q. Mr. Sun, the demeanor of the defendant that you observed on
20 this video, how does that compare to your interactions with
21 him?

22 MR. COHEN: Objection.

23 THE COURT: Sustained.

24 Q. How would you generally describe the defendant's demeanor
25 during your interactions with him?

1 MR. COHEN: Same objection.

2 THE COURT: Overruled.

3 A. Very confident.

4 Q. And on this video did you hear the defendant mention a
5 borrow-lend facility on FTX?

6 A. Yes.

7 Q. And was the borrow-lend facility one of the potential
8 justifications you had discussed --

9 MR. COHEN: Objection. Leading.

10 THE COURT: Overruled.

11 Q. Was the borrow-lend facility a potential justification that
12 you had discussed with the defendant on November 7, 2022?

13 A. Yes.

14 Q. And what had you said to the defendant about that?

15 A. It was not supported by the facts.

16 Q. And what was his response?

17 A. He acknowledged it.

18 MS. SASSOON: No further questions.

19 THE COURT: Thank you.

20 We will take a 15-minute break.

21 (Recess)

22 (Continued on next page)

23

24

25

1 (In open court; jury not present)

2 MS. SASSOON: Your Honor, it seems unlikely to arise,
3 but as I mentioned yesterday, we do have lawyers from the FTX
4 debtors here.

5 THE COURT: Understood. Thank you.

6 (Continued on next page)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (Jury present)

2 THE COURT: The defendant and the jurors all are
3 present, as they have been throughout.

4 THE DEPUTY CLERK: Please be seated, everyone.

5 THE COURT: The witness is reminded he's still under
6 oath.

7 THE WITNESS: Yes.

8 THE COURT: Mr. Cohen, cross-examination, please.

9 MR. COHEN: Thank you, your Honor.

10 CROSS EXAMINATION

11 BY MR. COHEN:

12 Q. Good morning, Mr. Sun.

13 A. Good morning.

14 Q. Now you testified earlier today that you went to Yale Law
15 School; is that correct?

16 A. Yes.

17 Q. Before that you took a degree from the University of
18 Toronto in electrical engineering?

19 A. Yes.

20 Q. And then you did a PhD program at Princeton; is that
21 correct?

22 A. That's right.

23 Q. And after graduating from Yale Law School you worked for a
24 firm called Davis Polk in New York.

25 A. That's right.

1 Q. And you became admitted to the New York bar?

2 A. That's right.

3 Q. And you're still admitted to the New York bar.

4 A. Yes.

5 Q. Okay. Davis Polk is one of the premier financial law firms
6 in the world?

7 A. Yes.

8 Q. And then you went from there to—you moved out to Seattle
9 and you worked for Fenwick & West, correct?

10 A. That's right. That's right.

11 Q. And they're also a major law firm, correct?

12 A. Yes.

13 Q. Specializing in startup companies?

14 A. That's right.

15 Q. And when you were at Fenwick, Alameda and then FTX were
16 clients of Fenwick, correct?

17 A. That's right.

18 Q. And they remained clients of Fenwick during the time you
19 were there.

20 A. That's right.

21 Q. And then after you moved over to FTX, Fenwick continued to
22 provide legal work for FTX and Alameda.

23 A. That's right.

24 Q. And that's called outside counsel?

25 A. That's right.

1 Q. Now I think you told us you began at FTX in August of 2021
2 and you were there through November 2022; is that correct?

3 A. That's right.

4 Q. And at first, when you first started at FTX, where were you
5 physically located?

6 A. I was in Hong Kong. I flew to Hong Kong. So before that I
7 was in Seattle. I flew to Hong Kong to start the job.

8 Q. And there came a time when you decided to move to the
9 Bahamas, correct?

10 A. That's right.

11 Q. And that was to be in the FTX corporate headquarters.

12 A. Yes.

13 Q. And that was the end of 2021?

14 A. I moved to Bahamas late September '21.

15 Q. Okay. September 2021. And you mentioned that you received
16 a management incentive compensation loan to buy a house in the
17 Bahamas. Do you recall that?

18 A. Yes.

19 MR. COHEN: Okay. Let's call out for identification,
20 for the witness only, Defendant's Exhibit 268, please.

21 Q. So the first question, Mr. Sun, is: Take a moment to look
22 through this document and let me ask you if you recognize it.

23 A. Yes.

24 Q. And is this the promissory note that you entered into in
25 connection with the loan?

1 A. That's right.

2 MR. COHEN: Your Honor, we offer Defendant's
3 Exhibit 268.

4 MS. SASSOON: No objection.

5 THE COURT: Received.

6 (Defendant's Exhibit 268 received in evidence)

7 Q. Now if you can see at the top, sir, this is—you're the
8 borrower and you're receiving a loan of \$2.34 million, correct?

9 A. That is correct.

10 Q. And this was the loan you were going to use to buy the
11 house in the Bahamas.

12 A. That's right.

13 MR. COHEN: If we could scroll down to the next
14 paragraph. Can you call out those terms.

15 If you look at the first—the first sentence is on the
16 first to occur. If we can go from there all the way down to
17 maturity date.

18 Q. And just to simplify this, Mr. Sun—correct me if I'm
19 wrong—you didn't have to start paying back the loan right
20 away, correct?

21 A. Give me a moment to review it.

22 Q. Take as much time as you need.

23 A. Yes, no immediate payments.

24 Q. Right. So there was a maturity date five years out,
25 correct?

1 A. Or earlier—yeah.

2 Q. So unless—well, let me go through it. You didn't have to
3 pay back the loan for five years unless the property was sold
4 or you ceased to work for the company, correct?

5 A. At a high level, yes.

6 MR. COHEN: Okay. Continuing on to the next—the next
7 entry, Brian, next paragraph, "Interest shall accrue."

8 Q. "Interest shall accrue on any unpaid principal based on a
9 simple interest rate of the midterm AFR." Do you see that,
10 sir?

11 A. That's right.

12 Q. And my question simply is: What does "Interest shall
13 accrue" mean?

14 A. So the midterm applicable federal rate, the AFR, as of
15 December 2021.

16 Q. Did it mean you had to make monthly interest payments?

17 A. No.

18 Q. So the principal and the interest were deferred until some
19 future date, correct?

20 A. Right.

21 Q. Now you then moved to the Bahamas in September, you said?

22 A. That's right.

23 MR. COHEN: Okay. You can take that down, Brian.

24 Q. And you purchased the home, correct?

25 A. That's right.

1 Q. Okay. And is it fair to say that in January of 2022, you
2 received a bonus?

3 A. That's right.

4 Q. Also for \$2.3 million.

5 A. I think it was actually 3.5 total.

6 Q. And what was the purpose of receiving that bonus?

7 A. To—to incentivize me to join the company as well as bonus
8 for the work I had done at FTX.

9 Q. And you had been at FTX since August.

10 A. That's right.

11 Q. So six months, and you received a \$3.5 million bonus after
12 signing a promissory note to pay back 2.3; is that correct?

13 A. No. There were separate—the 3.5 is separate and apart
14 from the 2.3.

15 Q. You didn't see them connected at all.

16 A. So depends on what you mean by connected. Now one of them
17 is obviously related to my employment, and, you know, the
18 house—the payment terms we just went through is also related
19 to my employment.

20 Q. So you believe that the loan to buy the house was a valid
21 loan.

22 A. Yes.

23 Q. Now you described some of your duties as the general
24 counsel at FTX, so I don't want to go through all of them, but
25 let me just ask you: General counsel is the chief legal

1 officer of the company, correct?

2 A. Generally, yes. I would just note that Dan Friedberg was
3 also, so I was reporting to both him and Sam.

4 Q. Okay.

5 A. So he was managing some of the legal as well.

6 Q. So Dan Friedberg was someone you had known at Fenwick &
7 West, correct?

8 A. Yes.

9 Q. You had both been attorneys at Fenwick?

10 A. Yes.

11 Q. And you both came in-house to work for FTX.

12 A. Yes, so he joined much earlier than I did, a year and a
13 half earlier.

14 Q. Okay. With the exception of Mr. Friedberg and the
15 relationship you just described, were you the senior-most legal
16 officer at FTX?

17 MS. SASSOON: Objection, form.

18 THE COURT: Sustained.

19 Q. Did you supervise other attorneys at FTX?

20 A. Yes.

21 Q. Okay. Who supervised you?

22 A. As I said, I reported to Dan and Sam.

23 Q. And I think you mentioned that one of the projects you took
24 on at the beginning was trying to get licenses for FTX. Do you
25 recall that, sir?

1 A. That's right.

2 Q. And can you explain to the jury what you meant by that.

3 A. Sure. So in the summer of 2021, a lot of FTX's competitors
4 were getting hit by fines, investigations, subpoenas, by
5 regulators around the world, and when I joined FTX, one of my
6 main mandates was—FTX was unregulated at that time, and one of
7 my main mandates was to help FTX get regulated and licensed in
8 as many countries as possible.

9 Q. And you worked on that.

10 A. That's right.

11 Q. With other attorneys in the legal department.

12 A. That's right.

13 Q. About how large was the legal department?

14 MS. SASSOON: Objection.

15 THE COURT: What's the objection?

16 MS. SASSOON: Relevance.

17 THE COURT: Sustained.

18 Q. Were there other attorneys in the legal department besides
19 you and Mr. Friedberg?

20 MS. SASSOON: Objection.

21 THE COURT: Sustained.

22 He already testified he supervised other attorneys.

23 MR. COHEN: Okay. I understand, Judge. I'll move on.

24 Q. And were you successful in obtaining those licenses?

25 A. Yes, we got a good number of licenses over the course of

1 the year, year and two months I was there.

2 Q. Okay. Now I believe you testified that another project you
3 took on was handling the corporate structure, corporate setup
4 of the company, correct?

5 A. That is correct.

6 Q. And when you got there, your view was that the corporate
7 housekeeping was sort of a mess, correct?

8 A. That is right.

9 Q. So you had to organize many different companies that had up
10 to that point not been organized properly, in your view,
11 correct?

12 A. That is right.

13 Q. Now if we could turn to another topic, Mr. Sun.

14 Do you recall giving testimony earlier this morning
15 about various loans that were made to Sam, Gary, and others?

16 A. That's right.

17 Q. And you kept track of them you said on a spreadsheet that
18 you kept.

19 A. That's right.

20 Q. And Ms. Sassoon went over that spreadsheet with you. There
21 was about 15 to 20 of them, correct?

22 MS. SASSOON: Objection, form.

23 THE COURT: Sustained.

24 Q. How many loans, to your recollection—we can always bring
25 it up, but how many loans were there?

1 A. There were about 30 to 40, but as you said, it's on that
2 spreadsheet.

3 Q. Okay. And you told us that you worked with others on how
4 the loans should be structured as a legal matter; is that
5 correct?

6 A. That's correct.

7 Q. Did the others include Fenwick & West?

8 A. Yes.

9 Q. Who else worked on the loans?

10 A. Myself, Dan, Fenwick, we also had valuation consultants,
11 and our tax and accounting firms were also brought in from time
12 to time.

13 Q. Okay. Just so we're clear, what's a valuation consultant?

14 A. Sure. So it's a company that tries to calculate the value
15 of the shares of the company. So unlike a public company
16 where, you know, shares are traded, there's always a price for
17 it, for a private company that's not gone public yet, the
18 valuation firm tries to guesstimate as best as they can what
19 the valuation of the shares are.

20 Q. Valuation, tax attorneys. Okay.

21 Now let's talk about Sam and Gary. They were the
22 owners of Alameda, correct?

23 A. Right.

24 Q. Now they could have taken these funds out as dividends,
25 correct?

1 MS. SASSOON: Objection.

2 THE COURT: What's the objection?

3 MS. SASSOON: Form and speculative.

4 THE COURT: Sustained.

5 Q. As a general counsel of FTX, did you have a view as to
6 whether Sam and Gary could have received these funds in a
7 different form than a loan?

8 A. Yes. There were probably different ways—again, the
9 fundamental assumption we were working under is that Alameda
10 was owned 90 percent by Sam, 10 percent by Gary, and that all
11 of the money that was at Alameda, because of their ownership,
12 belonged to them. We were not aware that they were customer
13 money.

14 Q. And in terms of structure, there were other ways, in
15 alternative to the loan structure, correct?

16 A. Yes, probably so.

17 Q. But after the process you just described, the loan
18 structure was selected, correct?

19 A. So the loan structure was actually in place at the time
20 that I joined FTX. It was—it was one that I inherited. But,
21 you know, throughout my time there, we worked with outside
22 consultants to identify potential issues with it and to take,
23 you know, measures to mitigate those risks.

24 Q. So you inherited this structure.

25 A. Yes.

1 Q. But as you took it over, you didn't change it.

2 A. That's right.

3 Q. Okay.

4 A. That's right. For the most part. So there were a few
5 changes that we, you know, worked with outside consultants to
6 make.

7 Q. All right. Let's move to another topic, Mr. Sun.

8 MR. COHEN: If we could pull up Government Exhibit 558
9 in evidence.

10 Q. These are the May 13, 2020 terms of service. Do you recall
11 giving testimony about these this morning?

12 MS. SASSOON: Objection. It's not 2020.

13 MR. COHEN: 2022. I apologize.

14 A. Yes.

15 MR. COHEN: Too many twos.

16 Q. Okay. And I believe you told us that when you came on
17 board, they were 80 to 90 percent drafted?

18 A. That's right.

19 Q. Who had drafted them?

20 A. So this was part of a Bahamian license application. I know
21 that we had hired an external consultant working with Dan,
22 Adrian, and our outside counsels, Fenwick and Herbert Smith.

23 Q. And Herbert Smith is a different law firm than Fenwick?

24 A. That is right.

25 Q. And that's headquartered in London, correct?

1 A. I actually don't know where they're headquartered.

2 Q. Which office of Herbert Smith were you working with?

3 A. Singapore.

4 Q. So basically you took the draft that they had started and
5 then you brought it to the—brought it to conclusion.

6 THE COURT: Sustained as to form. Who's "they"?

7 MR. COHEN: Let me start again, your Honor.

8 Q. So you mentioned that the two law firms that had worked on
9 it, to your knowledge, were Fenwick & West and Herbert Smith;
10 is that correct?

11 A. That's right.

12 Q. Okay. And then is it your testimony, sir, that you then
13 completed the work?

14 A. Working with them, yes.

15 Q. And I believe you told us that what you were trying to do
16 in the terms of service was to lay out the obligations of FTX
17 and its customers, correct?

18 A. That's right. That's what the terms of service spells out.

19 Q. Okay. Why don't we take a look at the terms of service.

20 MR. COHEN: Let's take a look at page 10 at the
21 bottom, please.

22 Okay. If you can go, Brian, up to the top, 8.2.

23 Q. That section is headed Digital Assets. Do you see that,
24 sir?

25 A. Yes.

1 Q. And you testified about that this morning on your direct,
2 correct?

3 A. Yes.

4 Q. Okay. And if we could go down to 8.2.6. Do you see that?

5 A. Yup.

6 Q. And you told us that this provision related to digital
7 assets and title to digital assets and all the other things
8 laid out in A, B, and C. I'm not going to go through it again.
9 Is that correct?

10 A. Yes.

11 Q. Now is it fair to say, Mr. Sun, that fiat was addressed in
12 different sections of the terms of service?

13 A. Yes, it's not covered by the definition of digital assets
14 here.

15 Q. Okay. Fiat is something different than digital assets,
16 correct?

17 A. Under the definitions, yes.

18 MR. COHEN: Okay. If we could look to the next page,
19 page 11, bottom of the page. Call out 8.3.

20 Q. This is a section called "Fiat currency," correct, sir?

21 A. Yes.

22 Q. And it called out whatever the obligations that FTX and the
23 customers had with regard to fiat, correct?

24 A. Yes.

25 MR. COHEN: All right. Continuing in the document, if

1 we could go to page 27.

2 Q. Top of the page. Do you see that section, sir? What does
3 that relate to?

4 A. The governing law of the—

5 MS. SASSOON: Objection.

6 THE COURT: Well, it says what it says, and the
7 agreement is in evidence, but I would suggest caution.

8 MR. COHEN: I'm just going to ask one question.

9 Q. Could you read that out, sir.

10 A. "The terms and any dispute shall be governed by, and
11 construed in accordance with, English law."

12 Q. Okay. Thank you, sir.

13 MR. COHEN: Now if we could go back to page 17.

14 Excuse me. 16. And go to the heading 16.

15 And Brian, if you could highlight 16, just the
16 heading.

17 Q. That refers to the section about margin trading, correct,
18 sir?

19 A. Yes.

20 Q. And you told us earlier there was an entire section devoted
21 to margin trading.

22 A. Yup.

23 Q. Based on your experience working at FTX, did you have a
24 view about what percentage of the assets were participating in
25 the margin trading program?

1 MS. SASSOON: Objection, foundation.

2 THE COURT: Sustained.

3 Q. In connection with your work at FTX, did you ever—did you
4 ever look into how many—how many users took advantage of the
5 margin trading program?

6 MS. SASSOON: Objection. Also vague as to time frame.

7 Q. During the time you were the general counsel.

8 A. I do not recall.

9 Q. Okay. Before we—well, let me—before we move on, if you
10 could look at Section 16.4.

11 Do you recall giving testimony about that today, sir?

12 A. Yes.

13 Q. And if I might go through it with you.

14 MR. COHEN: At the top of the first—if you could
15 highlight the first sentence.

16 Q. It says, "Under certain market conditions, it may become
17 difficult or impossible to liquidate a position."

18 And then you described for us, sir, how, if there was
19 a difficulty liquidating a customer's account, the backstop
20 liquidity providers might have to be brought into it, correct?

21 A. That's right.

22 Q. And let's continue on.

23 MR. COHEN: If you could go, Brian, to the sentence
24 that begins, "In such an event." Right here. Highlight that
25 sentence.

1 Q. "In the event that the customers did not have sufficient
2 assets, in such event, our backstop liquidity provider program
3 may come into play, but there is no assurance or guarantee that
4 any such program activities will be sufficient or effective in
5 liquidating your position." Do you see that, sir?

6 A. Yes, I see that.

7 Q. That was the next step you described to us earlier.

8 A. That's right.

9 Q. Okay. And then to complete that, "as a result, you may
10 lose all of your assets or incur a negative balance in your
11 account. In addition, even if you have not suffered any
12 liquidations or losses, your account balance may be subject to
13 clawback due to losses suffered by other users."

14 So is that—let me not try to—let me just ask you
15 your understanding of those sentences, sir.

16 A. So as it described, this is—describes our liquidation
17 waterfall. I would just maybe caveat by saying this is a very
18 shortened version that is drafted mostly for disclaimer
19 purposes. There is a much more detailed description of our
20 liquidation and risk engine on our help desk web page and also,
21 as I mentioned earlier today, that, you know, this does not
22 actually describe the insurance fund, which is something that
23 we have, and as I mentioned earlier today, my understanding is
24 that our insurance fund has never been depleted.

25 Q. You said this was describing, at least in part, something

1 you called the liquidation waterfall. What do you mean by
2 that?

3 A. It basically means the order in which liquidations occur.

4 Q. Okay. And so at least according to this provision, there
5 could be a time when, even if a customer had not suffered any
6 losses of their own, their balances could be subject to
7 clawback due to losses suffered by other users; is that
8 correct, sir?

9 MS. SASSOON: Objection.

10 THE COURT: Sustained. It says what it says and we've
11 been over this at least twice.

12 MR. COHEN: Your Honor, he's the author of the
13 document.

14 MS. SASSOON: Objection. No, he's not.

15 THE COURT: He's not the author of the document. He's
16 somebody who participated, starting at a point where it was 80
17 to 90 percent finished, and in any case, the words are on the
18 page, and it doesn't help to read them six times.

19 MR. COHEN: Okay. I won't go for six, your Honor.

20 BY MR. COHEN:

21 Q. Mr. Sun, have you ever heard of the term

22 "auto-deleveraging"?

23 A. Yes.

24 Q. What's your understanding of that?

25 A. It means that when there is significant volatility in the

1 market that could lead to losses, leveraged positions will be
2 automatically closed out as part of the liquidation mechanism.

3 Q. And in your understanding, sir, are there times when
4 auto-liquidation occurs when one customer's assets could be
5 used to cover the losses of another customer's assets?

6 MS. SASSOON: Objection.

7 THE COURT: What's the objection?

8 MS. SASSOON: Confusing and foundation.

9 MR. COHEN: He just said he knew it.

10 THE COURT: Give me a moment.

11 MS. SASSOON: Your Honor, the previous question was
12 about auto-deleveraging.

13 THE COURT: Yes, it was, and this question is about
14 something called auto-liquidation. Sustained. Let's try
15 again.

16 MR. COHEN: I'm sorry. Let's have the last question
17 read back, please. Two questions ago.

18 (Record read)

19 MR. COHEN: Okay. I take his Honor's point. I will
20 move on.

21 BY MR. COHEN:

22 Q. Now you were asked some questions about something called
23 segregation of assets. Do you recall that, Mr. Sun?

24 A. Yes.

25 Q. Can you describe for us what your understanding of

1 segregation of assets was.

2 A. Sure. Which is when FTX receives assets of customers,
3 whether it's fiat or crypto, that they will hold those assets
4 in segregated bank accounts or crypto wallets separate and
5 apart from FTX's own assets.

6 Q. So I want to just go through a couple things here.

7 You were talking about separation of FTX's operational
8 assets. I think you gave the example of payroll, for example,
9 for customer assets, correct?

10 A. Right.

11 Q. Now that's a different concept than separation of customer
12 A's assets versus customer B's assets, correct?

13 A. That's correct.

14 Q. And I think you said at FTX, with customer A, B, and so
15 on's deposited assets, they were all held in one account.

16 A. That's right. We do not maintain individual wallets or
17 accounts for each customer.

18 Q. And that was called an omnibus account, or omnibus wallet.

19 A. Yes. So we hold all customer assets in, you know, these
20 combined wallets, which we refer to as omnibus accounts.

21 Q. Okay.

22 THE COURT: Was that true generally or with respect
23 only to crypto assets?

24 THE WITNESS: My understanding it was the same for
25 both fiat and crypto assets.

1 THE COURT: Thank you.

2 THE WITNESS: Thank you.

3 BY MR. COHEN:

4 Q. Now let me move forward in time, Mr. Sun.

5 I think you described a situation in August of 2022
6 when you learned about Alameda having certain privileges on the
7 FTX exchange. Do you recall telling us about that?

8 A. Yes.

9 Q. And how did you learn of that?

10 A. I was informed by Zach Dexter and Ryne Miller.

11 Q. And this was about—this was in about—in or about August
12 of 2022?

13 A. About August or September.

14 Q. Okay. Did you discuss this with anyone else besides
15 Mr. Dexter and Mr. Miller around that time?

16 A. Yes. I discussed it with Dan Friedberg, Nishad, and Sam.
17 And David.

18 Q. And I believe you told us that when you first learned of
19 this, you were shocked.

20 A. That's right.

21 Q. And the take-away was that this was going to be changed to
22 a delayed liquidation?

23 A. Yes. After some back-and-forths, the take-away is that
24 they will change it to a delayed liquidation mechanism, make it
25 known to our users and our regulators, and also offer it on a

1 nondiscretionary basis to all large market makers.

2 Q. And that was going to be implemented sometime after August
3 of 2022, correct?

4 A. That's right.

5 Q. Okay. And I think you said that you were not aware of
6 whether that was ever implemented, correct?

7 A. That's right.

8 Q. Did you follow up?

9 A. So as I understand it, I had completed everything on the
10 legal front to implement that. It was passed on to the
11 business team, and they were stuck in a process of discussing
12 what other nondiscretionary terms that we were to offer to
13 other market makers on the exchange.

14 Q. So it never got implemented.

15 A. That's my understanding.

16 Q. And you left it to the business team.

17 A. That's my understanding.

18 Q. Did you think about resigning over it?

19 A. I did.

20 Q. But you didn't.

21 A. That's right. And the difference is, when I first heard
22 about it in August of 2022, there was—I did not know that that
23 was the same mechanism that Alameda used to withdraw customer
24 assets until Nishad told me around 11 p.m. on November 7.

25 Second, Nishad had assured me that that mechanism had

1 never been triggered.

2 And three, as we've discussed, you know, we had a path
3 to actually get rid of it.

4 Q. Okay, sir. Let me move to a different topic.

5 In your experience, have you ever heard the term
6 "document protection policies"?

7 A. Document protection, in what—in what sense?

8 Q. Or "data protection policies."

9 A. Yes.

10 THE COURT: Which one are you asking about?

11 MR. COHEN: The second one, your Honor; data
12 protection policies.

13 A. So again, if you could be a bit more specific, it would be
14 helpful. It could be—

15 Q. Sure. Have you ever heard of policies that companies use
16 to decide what data to keep or not keep?

17 A. Yes.

18 Q. What do you—how do you think of them? What term do you
19 use?

20 MS. SASSOON: Objection.

21 THE COURT: What's the objection?

22 MS. SASSOON: The "how do you think of them" seemed
23 vague, but if he's just asking for terminology, I'll withdraw
24 it.

25 THE COURT: Are you just asking for terminology?

1 MR. COHEN: For now, yes.

2 THE COURT: All right.

3 A. So—so yeah. So companies have policies to help guide them
4 as to their, you know, data retention, protection policies.

5 Q. Okay. Based on your experience at FTX, did FTX have such
6 policies?

7 A. So again, data protection policies can cover a very wide
8 range of things, from user privacy to, you know, separate
9 security, to, you know, document retention. I can't say that
10 FTX had all of them, but it had some of them.

11 Q. Did you ever participate in reviewing or drafting such
12 policies?

13 MS. SASSOON: Objection, vague. Which—

14 THE COURT: Sustained.

15 Q. I'll break it down.

16 Did you ever participate in reviewing such policies at
17 FTX?

18 MS. SASSOON: Objection. It's still vague. What such
19 policies? He just said it could be 20 different things.

20 THE COURT: Sustained, form.

21 Q. Okay. Let's break this down even more, Mr. Sun.

22 To your knowledge did FTX have any documentation that
23 dealt with data retention?

24 MS. SASSOON: Objection, form.

25 THE COURT: Overruled.

1 A. I can't remember off the top right now.

2 Q. Nothing comes to mind.

3 THE COURT: That's what he said.

4 Q. Answer the next questions yes or no, please.

5 Did you ever talk with Dan Friedberg about data
6 retention issues?

7 A. Yes.

8 Q. Answer this question yes or no, please: Did you ever talk
9 to anyone at Fenwick & West about data retention issues?

10 MS. SASSOON: Objection.

11 THE COURT: What's the objection?

12 MS. SASSOON: 401, 403, raised before trial.

13 THE COURT: Sustained, on all grounds.

14 Q. During the time you were the general counsel of FTX, did
15 FTX ever receive subpoenas?

16 A. Yes.

17 Q. Did you participate in responding to those subpoenas?

18 A. Yes.

19 Q. In connection with responding to those subpoenas, did
20 you—answer this yes or no—did you have to deal with data
21 retention issues?

22 A. Yes.

23 Q. Have you ever heard of communications called Signal and
24 Slack?

25 A. Yes.

1 Q. What are they?

2 A. Signal is a text messaging app, and Slack is a workspace
3 collaboration messaging app.

4 Q. And were they used at FTX?

5 A. Yes.

6 Q. Were they used by the legal department?

7 A. Yes.

8 Q. Let's move on, Mr. Sun.

9 MR. COHEN: If we could go back to Government
10 Exhibit 326 in evidence.

11 Q. Do you recall giving testimony about this document, sir?

12 A. Yes.

13 MR. COHEN: And if we look at the bottom of the page.
14 If you can highlight, Brian, the "from" and the "sent."

15 Q. So this is an email sent by you. Were you can@ftx.com?

16 A. Yes.

17 Q. And the date is Friday, May 13, 2022, correct?

18 A. Yes.

19 MR. COHEN: And go to the body of the email. And if
20 you can highlight the text of that, Brian, the first paragraph.

21 The whole first paragraph.

22 Q. You are providing to Ms. Knaus the new terms of service,
23 correct?

24 A. That's right.

25 Q. And then you give a place for her to click on. That's the

1 document we were just looking at as Government Exhibit 558,
2 isn't it, sir?

3 A. That's right.

4 MR. COHEN: Take that down.

5 Q. By the way, FDM was a different entity than FTX
6 International, correct?

7 A. So FTX International wasn't an entity by itself. It
8 was—you know, we had one parent holding company and we had
9 maybe 2,000 operating entities below.

10 Q. Thank you, sir.

11 Now do you recall giving testimony about some events
12 in November of 2022?

13 A. That's right.

14 Q. Okay. And you gave—you described a meeting you were in
15 with Sam and others where you went over a spreadsheet. Do you
16 recall that, sir?

17 A. That's right.

18 Q. And one of the things you took away from this meeting was
19 that in your view, the spreadsheet reflected a \$7 billion hole,
20 I believe you told us.

21 A. That's right.

22 Q. And as you understood it, Mr. Bankman-Fried was talking to
23 investors at the time, correct?

24 A. That's right.

25 Q. And this spreadsheet got sent to Apollo; that's one of the

1 investors you were mentioning at the time.

2 A. That's right.

3 Q. The spreadsheet with the hole in it got sent to Apollo.

4 A. That's right.

5 Q. And then you told us you went, you had a discussion with
6 Mr. Bankman-Fried, and I think you said you went on a walk with
7 him; is that correct?

8 A. That's right.

9 Q. Okay. And you went over possible justification for what
10 happened, correct?

11 A. That's right.

12 Q. And then after that, Mr. Bankman-Fried had a call with
13 Apollo?

14 A. He stepped out, saying that he was going to go for a call.

15 Q. And I take it you weren't on that call.

16 A. I was not on the call.

17 Q. You also mentioned that during the same period, that during
18 that same week, you had a conversation with Nishad Singh. Do
19 you recall that?

20 A. That's right.

21 Q. And he told you he was concerned about the loans he had
22 received from the company.

23 A. That's right.

24 Q. Did he tell you they weren't really his loans?

25 A. Sorry. What do you mean?

1 Q. Did he tell you he wasn't really on the hook for them?

2 A. That he was not really on the hook for them. I think his
3 conversation with me was he was worried about his ability to
4 repay those loans and what was going to happen to those loans.

5 Q. Okay. Understood.

6 Okay. Now one more topic, Mr. Sun.

7 You mentioned that you're here today pursuant to a
8 non-prosecution agreement.

9 A. That's right.

10 MR. COHEN: Okay. Can we pull up Government
11 Exhibit 12 in evidence.

12 Oh, I'm sorry. I'm sorry. It's 3524-012 in evidence.

13 MS. SASSOON: This is not in evidence, your Honor.

14 MR. COHEN: Oh, it's not in? I'm sorry. I thought
15 you moved it in. Well, then let's do this. Just show it to
16 the witness.

17 THE COURT: I'm still not clear what it is you're
18 proposing to show to the witness. What exhibit?

19 MR. COHEN: 3524-012. It's in the 3500, your Honor.

20 THE COURT: And is it a government exhibit, is it a
21 defense exhibit, or has nobody bothered to mark it?

22 MR. COHEN: It's not marked outside of that, your
23 Honor. We could mark it.

24 THE COURT: Let's mark it.

25 MR. COHEN: Okay. What is the next DX number?

1 MS. SASSOON: Your Honor, I think yesterday we marked
2 it using the same number but adding a DX, so to keep with the
3 convention—

4 THE COURT: That's fine. So it will be Defendant's
5 Exhibit 3524-012 for identification.

6 BY MR. COHEN:

7 Q. Take a look at this document, sir, and my question is
8 whether you recognize it.

9 A. Yes, I do.

10 Q. What is it?

11 A. This is the non-prosecution agreement.

12 Q. And if you can turn to the second page.

13 Is that your signature?

14 A. Yes.

15 MR. COHEN: Your Honor, we offer DX 3524-012.

16 MS. SASSOON: No objection.

17 THE COURT: Received.

18 (Defendant's Exhibit 3524-012 received in evidence)

19 Q. So this is a document you are—you mentioned you're
20 testifying here pursuant to a non-prosecution agreement; is
21 that correct?

22 A. That's right.

23 Q. And this is the agreement?

24 A. That's right.

25 Q. If we could call your attention to the second full

1 paragraph.

2 MR. COHEN: And call that out.

3 Q. And look at the first sentence. It says, "On the
4 understandings specified below, the Office of the United States
5 Attorney for the Southern District of New York will not
6 criminally prosecute Mr. Sun for any crimes (except for
7 criminal tax violations, if any, as to which this Office cannot
8 and does not make any agreement) related to the schemes by
9 [Mr.] Bankman-Fried" and others, and so on.

10 So what is your understanding, Mr. Sun, of how this
11 provision works, or this agreement works?

12 A. My understanding of the agreement is I am to testify
13 truthfully on the stand. If I do so, I will not be prosecuted
14 by the government.

15 Q. And who makes the determination of whether you've been
16 truthful on the stand?

17 A. You know, I'm supposed to tell the truth here on the stand.
18 And that's—that's—

19 Q. Isn't it fair to say that's the government who makes the
20 determination?

21 A. I think I'm required to testify as to the truth on the
22 stand.

23 Q. If the government determines that you haven't been truthful
24 or you've provided incomplete or misleading testimony, this
25 agreement doesn't apply, correct?

1 MS. SASSOON: Objection, form.

2 THE COURT: Sustained.

3 MR. COHEN: Let's go down to the next paragraph.

4 Call it out.

5 If we can go to the first sentence, Brian, and
6 highlight it in yellow.

7 BY MR. COHEN:

8 Q. "It is understood that, should Mr. Sun commit any crimes
9 subsequent to the date of signing of this agreement, or should
10 the government determine that he has knowingly given false,
11 incomplete, or misleading testimony or information, or should
12 he otherwise violate any provision of this agreement, Mr. Sun
13 shall thereafter be subject to prosecution for any federal
14 criminal violation of which this Office has knowledge,
15 including perjury and obstruction of justice." Do you see
16 that, sir?

17 A. Yup.

18 Q. Is it fair to say that if the government determines that
19 you've knowingly given false, incomplete, or misleading
20 testimony or information, you could be subject to prosecution?

21 MS. SASSOON: Objection, form. The question is his
22 understanding.

23 MR. COHEN: Can we have a nonspeaking objection.

24 THE COURT: Sustained, form.

25 Q. Mr. Sun, what is your understanding of whether you can be

1 prosecuted?

2 A. If I tell the truth on the stand, I will not be prosecuted.

3 Q. Okay. And what is your understanding of who makes that
4 determination?

5 A. I guess, you know, who makes the determination about truth.

6 Q. You signed this—

7 MR. COHEN: Drop down. Drop the paragraph down.

8 Go back to the first page, Brian. I'm sorry.

9 Okay. Go to the top of the page. And the date. Just
10 up at the top, Brian.

11 Q. So you signed this agreement on October 17th; is that
12 correct?

13 A. That's right.

14 Q. That was earlier this week?

15 A. That's right.

16 Q. And then did you meet with the government after you signed
17 it?

18 A. Yes.

19 Q. That was yesterday?

20 A. That's right.

21 MR. COHEN: Okay. No further questions.

22 THE COURT: Thank you.

23 Any redirect?

24 MS. SASSOON: Just briefly.

25 Just keep that exhibit up, if you don't mind.

REDIRECT EXAMINATION

BY MS. SASSOON:

Q. Mr. Sun, can you please read the second sentence of the first paragraph of this agreement.

A. "This agreement is in furtherance of the request for Mr. Sun to testify, and should not be construed as a legal or factual determination that Mr. Sun has violated any federal law."

MS. SASSOON: Thank you for zooming in on that. We can take this down.

Q. You were asked about signing this on October 17, 2023. Prior to that had you met with the government?

A. Yes.

Q. Sorry. I couldn't hear you.

A. Yes.

Q. And did you meet with the government voluntarily?

A. Yes.

Q. And where did you come from to testify in court today?

A. On this trip, from Japan.

Q. And why did you come from Japan to testify?

A. Because I wanted to tell the truth on the stand and make the truth known.

MS. SASSOON: No further questions.

THE COURT: Thank you.

Anything else, Mr. Cohen?

1 MR. COHEN: No, your Honor.

2 THE COURT: All right. You're excused, Mr. Sun.

3 Thank you.

4 (Witness excused)

5 THE COURT: Do we have another witness today?

6 MR. REHN: We do, your Honor. It's a witness who I
7 think can probably be done by lunch if we extend a little bit
8 later, to 1:00 or so.

9 THE COURT: Can everybody hold their appetites?

10 Okay. Let's do it.

11 MR. REHN: The government calls Robert Boroujerdi.

12 THE DEPUTY CLERK: If you'd please step around and
13 remain standing and raise your right hand for a moment.

14 (Witness sworn)

15 THE DEPUTY CLERK: Thank you. Please be seated.

16 Sir, if you could please state your name and spell
17 your last name for the record.

18 THE WITNESS: Sure. Robert Boroujerdi. B as in boy,
19 O-R-O-U-J-E-R-D-I.

20 THE COURT: You may proceed, Mr. Rehn.

21 ROBERT BOROUJERDI,

22 called as a witness by the Government,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. REHN:

1 Q. Mr. Boroujerdi, I'd like to direct your attention to 2021.

2 Where were you working at that time?

3 A. Third Point.

4 Q. What is Third Point?

5 A. It's an institutional alternative asset manager.

6 Q. What is an alternative asset manager?

7 A. We invest across a broad spectrum of different types of
8 securities, both public and private companies, in different
9 asset classes, and we serve everything from pension funds,
10 endowments, foundations, and high-net-worth individuals as
11 clients.

12 Q. So your clients that you just mentioned invest money with
13 Third Point?

14 A. Yes.

15 Q. And then what? How does Third Point invest that money?

16 A. We look for opportunities where we think that what we would
17 invest in would appreciate in value over time.

18 Q. Where is Third Point located?

19 A. New York City.

20 Q. Where specifically in New York City?

21 A. Hudson Yards.

22 Q. What was your job at Third Point?

23 A. I was a managing director. I led our markets business and
24 strategy. I invested and helped manage portions of the firm.

25 Q. And so were you looking for investment opportunities for

1 Third Point?

2 A. Yes.

3 Q. And did you do research into potential investment
4 opportunities?

5 A. I did.

6 Q. What sort of markets were you researching?

7 A. Equity markets, interest rate markets, digital asset
8 markets, credit from time to time.

9 Q. And when you say digital asset markets, does that include
10 the cryptocurrency market?

11 A. It does.

12 Q. And cryptocurrency exchanges?

13 A. Yes.

14 Q. Did there come a time when you became aware of a company
15 called FTX?

16 A. Yes.

17 Q. When was that?

18 A. That would be late 2020, early 2021.

19 Q. Did there come a time when you began considering an
20 investment by Third Point in FTX?

21 A. Yes.

22 Q. And when was that?

23 A. That would be late Q1 of '21, early Q2 of 2021.

24 Q. And when you said Q1 and Q2, what are you referring to?

25 A. Sure. Take a calendar year and break it up into quarters.

1 So January, February, March would be quarter 1, and then so on
2 for quarter 2.

3 Q. How were you introduced to FTX?

4 A. A gentleman who was a salesperson at one of our brokers
5 made an introductory email to myself and a CIO of the firm to
6 individuals at FTX.

7 MR. REHN: Mr. Imperato, could you please pull up
8 Government Exhibit 523, just for the witness.

9 Q. Mr. Boroujerdi, do you recognize this document?

10 A. Yes, I do.

11 Q. And could you describe what the document is.

12 A. This is an email exchange, and I assume if we go down a
13 couple pages you'll see more of it, but email exchange where
14 there's an introduction made to myself and a colleague of mine
15 to Sam, and we were working to set up an introductory phone
16 call.

17 Q. And you mentioned Sam. Who were you referring to in
18 particular?

19 A. Sam Bankman-Fried.

20 Q. Did you have an understanding of who Sam Bankman-Fried was
21 when you received this email?

22 A. Yes.

23 Q. And who was he?

24 A. He was the CEO and founder of FTX.

25 MR. REHN: Your Honor, the government offers

1 Exhibit 523.

2 THE COURT: Received.

3 (Government's Exhibit 523 received in evidence)

4 MR. LISNER: No objection.

5 MR. REHN: And Mr. Imperato, could we go to the third
6 page of this exhibit. And bring it up for the jury.

7 And if you could expand the email that's in the middle
8 of this page.

9 BY MR. REHN:

10 Q. Mr. Boroujerdi, you mentioned that you were introduced to
11 FTX in the first quarter of 2021. Is this the email you were
12 referring to?

13 A. Yes, it is.

14 (Continued on next page)

1 Q. After you got this introductory email, did you have some
2 email exchanges with Sam Bankman-Fried?

3 A. Yes. There was logistic based, trying to set up a call.

4 MR. REHN: We can bring that down, Mr. Imperato, and
5 go up to the next page.

6 If we could expand the email in the middle from
7 Sunday, March 14 of 2021.

8 Q. Mr. Boroujerdi, can I ask you to read the email that was
9 sent by the defendant on March 14, 2021.

10 A. Hey, would love to jump on a call and feel free to share
11 the data room with them as well.

12 Q. So there is a reference here to a data room. Could you
13 explain what that is.

14 A. Sure. In the investment world, when you are looking at
15 potential investments, a lot of documents can come across the
16 chasm, be it a strategic deck, set of financial statements, org
17 chart, kind of name it.

18 What happens is, you can set up a virtual room where
19 you're permissioned by your email or a user name, and the
20 company that you made or other investors would be looking at
21 were just one access in one place. It allows the company to
22 track who is looking at their stuff, but it also gives them a
23 degree of control. But it, by and large, has information, as
24 you begin to evaluate an investment or you're evaluating it, to
25 give you background and color.

1 Q. Did you go to the data room that the defendant shared with
2 you?

3 A. Yes.

4 Q. What do you recall was in the data room?

5 A. Best of my recollection, there was certainly a strategic
6 deck where it laid out kind of the goals and background of not
7 only the crypto industry, the exchanges that were in it, things
8 like market share and then what FTX wanted to do from a
9 strategic perspective, there was also an org chart of business
10 organization and a set of financial statements.

11 Q. Just to be clear, this isn't a physical room. Could you
12 explain in a little more --

13 A. Imagine if you wanted to just go in your bank account on
14 the Internet, you would log into that Internet and then your
15 account would pop up and you would look at it. Rather than
16 seeing the balance of your account, assume that there is a
17 Power Point presentation or Microsoft Word document.
18 Effectively, they are digital documents that you can click on,
19 view, and, if given permission, you can download them as well.

20 Q. I think you mentioned that one of the things that was in
21 that data room was some financial data?

22 A. Yes.

23 Q. What sort of financial data?

24 A. It was actual data. My recollection, this was financial
25 statement data that showed things like revenue and profit and

1 market share and growth over time.

2 Q. So it included information about FTX's revenues and costs?

3 A. Yes.

4 Q. And the profits calculated after taking into account those
5 revenues and costs?

6 A. Yes, that would be correct.

7 Q. In deciding whether to invest in FTX, did Third Point rely
8 on the financial data it received from the company?

9 A. Yes.

10 Q. Did you expect that the numbers that FTX provided you were
11 an accurate depiction of its revenues and costs?

12 A. We did.

13 Q. Did anyone ever tell you that certain expenses were not
14 included in the revenue and cost numbers that FTX was reporting
15 to you?

16 A. No.

17 Q. If you had been told that, would you have taken that into
18 account in deciding whether to invest in the company?

19 MR. LISNER: Objection.

20 THE COURT: Overruled.

21 A. Yes.

22 Q. Why is that?

23 A. When you receive financial statements from a corporate or
24 an investment, you believe that that representation is
25 accurate, and all flow of information should be reflected

1 there, good or bad.

2 MR. REHN: Mr. Imperato, we can bring this part down
3 and go up to the first page of this document.

4 If you could expand the top two emails.

5 Q. Mr. Boroujerdi, did you ultimately have a call with some
6 people from FTX?

7 A. Specifically, yes. It was a Zoom call, not a phone call.

8 Q. Approximately when was that Zoom call?

9 A. It was in the middle of March of 2021, middle to late March
10 of 2021.

11 Q. And who was on the Zoom call?

12 A. Myself and members of the investment team at Third Point,
13 half a dozen or so of us were on that, and then Sam was on it
14 from the FTX side. I don't recall if there were other people
15 from FTX on the call.

16 Q. When you say Sam, are you referring to the defendant?

17 A. Yes.

18 Q. Who did the majority of talking on that Zoom call?

19 A. Outside of us asking questions or more notation of answers,
20 Sam led and drove the entirety of the call.

21 Q. Did you have any other Zoom calls with the defendant prior
22 to investing?

23 A. Yes, we did. After that initial call, we continued our
24 process as a team and spoke to him several weeks later, again
25 on a Zoom call.

1 Q. Where you were when you participated on those Zoom calls
2 with the defendant?

3 A. Keep in mind at the time FTX was located in Hong Kong, so
4 this was at night. I was in my New York City apartment.

5 Q. In your Zoom calls with the defendant, what was the subject
6 matter that was discussed?

7 A. We discussed the state of the crypto industry broadly, we
8 spoke about FTX's competitive positioning, growth drivers,
9 strategic plans, and what that opportunity said could be for
10 the business.

11 Q. Do you recall any particular aspects of FTX's business that
12 were discussed?

13 A. Yes. We spent quite a bit of time talking about what we
14 would call a risk engine, which was a technology process inside
15 FTX that was different than what we had been used to. It was
16 an automated process which took out a degree of humanity and
17 effectively treated every client the same.

18 Q. And focusing on that risk engine, what, if anything, did
19 the defendant say about that?

20 A. He stated that this technology had been built to
21 effectively take out human emotion, so people were treated
22 fairly and equitably, and it would also improve speed and
23 transparency.

24 Q. Was this conversation in the context of Third Point
25 considering whether to make an investment in FTX?

1 A. Yes.

2 Q. Why would you be considering the risk engine in deciding
3 whether to invest?

4 A. So exchanges, by and large, are interesting business models
5 and things we had looked at from an investing perspective
6 through time. You can think of the New York Stock Exchange or
7 you can think of eBay. These are auctions and marketplaces.
8 That means you match buyers and sellers. And if someone should
9 build a better mousetrap, quote/unquote, you could tend to
10 garner more share and more trust and more use.

11 Q. What in particular does the risk engine do to contribute to
12 the success of the business?

13 A. When you think about -- when you buy assets, you sometimes
14 don't put all the money down that you need to buy that asset,
15 and it creates margin. And what this did was ensure that you
16 would either post the amount of margin that was required for
17 that position automatically or that position would be sold out
18 if you did not post that.

19 Q. What sort of risks to the exchange would that account for?

20 A. Can you repeat the question or rephrase it, please.

21 Q. Would there be any risks to the exchange that would be
22 prevented by the risk engine?

23 MR. LISNER: Objection.

24 THE COURT: Overruled.

25 A. It would -- from our perspective, it would make -- it would

1 have less human interaction. It would be a speedier, more
2 potentially effective exchange.

3 Q. Now, on those Zoom calls with the defendant, did a company
4 called Alameda Research ever come up?

5 A. Yes, it did.

6 Q. And what, if anything, did the defendant say about Alameda
7 Research?

8 A. He spoke to Alameda Research as a hedge fund that he had
9 founded and started. The frustration at Alameda was about
10 trading on exchanges and that led to the birth of FTX. Beyond
11 that, we discussed the relationship of ownership and it was
12 conveyed to us that these -- this was an arm's length business,
13 that they operated independently, and served their own
14 self-interest.

15 Q. You used the term arm's length business. What, if
16 anything, did you understand that to mean?

17 A. These were independent businesses and, again, they operate
18 under their own self-interest. We understood that Alameda
19 could trade on the FTX exchange if needed, but these were
20 separate entities that Sam did control both from an equity
21 perspective, but that was the extent of it.

22 Q. In this conversation did the defendant ever say that
23 Alameda was exempt from the FTX risk engine?

24 A. No.

25 Q. Were you ever told by anyone at FTX that Alameda was exempt

1 from the exchange's risk engine?

2 A. No.

3 MR. LISNER: Objection. Form.

4 THE COURT: Sustained. Leading.

5 Q. Prior to investing in FTX, did you have an understanding as
6 to whether Alameda was exempt from the exchange's risk engine?

7 A. Can you ask the question again. Pardon me.

8 Q. Prior to investing in FTX, did you have any understanding
9 as to whether Alameda Research was exempt from the exchange's
10 risk engine?

11 A. No.

12 Q. Just to clarify, was your understanding that it was not
13 or --

14 A. We understood that Alameda was nonexempt.

15 Q. And if you had been told that Alameda was exempt, would
16 that have been something you took into account before deciding
17 whether to invest?

18 A. Yes.

19 MR. LISNER: Objection.

20 THE COURT: Overruled.

21 Q. Why would you have taken that into account?

22 A. There should be no preferential treatment on an exchange.
23 That would undermine the integrity of the exchange, upset
24 clients, and hurt the business model and thus the value, in our
25 view, of the asset over time.

1 Q. And if you had been told that Alameda was exempt from that
2 risk engine that was described to you, would you have invested
3 in FTX?

4 A. No.

5 Q. I don't think I heard --

6 A. No.

7 Q. In your Zoom calls with the defendant prior to investing,
8 did the subject of FTX custody of customer funds ever come up?

9 A. Yes.

10 Q. What, if anything, did the defendant say about that?

11 A. That they used a combination of hot and cold wallets,
12 largely hot wallets, that they worked with select banks to
13 shift -- to allow for people to move from one custodian to
14 another, themselves included, and individuals could hold assets
15 on the exchange and trade there.

16 Q. Did the defendant ever say that Alameda Research could
17 withdraw customer funds from the exchange?

18 A. No, that was never said.

19 Q. If you had been told that Alameda could withdraw customer
20 funds from the exchange, would you have still invested in FTX?

21 MR. LISNER: Objection.

22 THE COURT: Overruled.

23 A. No.

24 Q. Ultimately, did Third Point invest in FTX?

25 A. Yes.

1 MR. REHN: Mr. Imperato, can we bring up what's in
2 evidence as Government Exhibit 823.

3 Q. Mr. Boroujerdi, do you recognize this?

4 A. Yes, I do.

5 Q. What is this?

6 A. This is an announcement from Sam's Twitter account speaking
7 about a capital raise that occurred with a handful of investors
8 back in July of 2021.

9 Q. And is Third Point identified as one of the investors in
10 this tweet?

11 A. It is.

12 MR. REHN: Mr. Imperato, if we can highlight the Third
13 Point LLC.

14 Q. What's the date on this tweet?

15 A. July 20, 2021.

16 Q. Approximately how much did Third Point invest in FTX in
17 July of 2021?

18 A. 35 million.

19 Q. What was the purpose of FTX's fundraising, as you
20 understood it?

21 A. It was to hire staff, grow strategic initiatives, increase
22 market share, and look at new business lines that they could
23 potentially add.

24 Q. Were you told that FTX was taking money raised from this
25 investment round and transferring that money to Alameda

1 Research?

2 A. No.

3 Q. If you had been told that FTX would transfer the money
4 rates from investors to Alameda, would that have affected your
5 investment decision?

6 MR. LISNER: Objection.

7 THE COURT: Overruled.

8 A. Yes.

9 Q. How so?

10 A. These are two separate entities. This capital was for the
11 growth of FTX. It was not for any related party in
12 transactions or businesses.

13 MR. REHN: We can bring that down.

14 Q. Mr. Boroujerdi, after Third Point made its initial
15 investment in July of 2021, did you continue to pay attention
16 to FTX's business?

17 A. Yes.

18 Q. Why is that?

19 A. Well, as a steward of capital you are looking to obviously
20 watch that investment grow and improve. You try to provide
21 feedback. It's an important portion of the process.

22 Q. And did Third Point ever participate in additional
23 fund-raising rounds by FTX?

24 A. Yes.

25 Q. Approximately when were those?

1 A. That was later in 2021, that I recall.

2 Q. Approximately how much in total did Third Point invest in
3 FTX?

4 A. In FTX international, \$60 million.

5 Q. Have you ever met the defendant in person?

6 A. Yes.

7 Q. When was that?

8 A. I met him at a Bitcoin Miami conference, large industry
9 conference, in June of '21; I met him in an Equinox Hotel event
10 in Hudson Yards in New York City in September of 2021; as well
11 as an FTX Bahamas event in 2022 in the middle of the year.

12 Q. With reference to the Equinox Hotel event you mentioned,
13 what was the purpose of that event?

14 A. That was an event that was cohosted by a company called
15 Circle, a Blockchain technology company called Solana, and FTX.
16 The three of them were providing some of their leadership to
17 speak to customers, speak to investors, and industry
18 participants to get to know each other, talk a little bit about
19 what the strategic outlook was, areas of focus, and time to
20 spend.

21 Q. Aside from that event hosted by the FTX and other companies
22 at the Equinox Hotel, were there any other times where you saw
23 the defendant in New York City?

24 A. Yes. JP Morgan had a conference in December of 2021. Sam
25 was on the dais with the host and key speaker. They did a

1 fireside chat at that time.

2 Q. Where was that?

3 A. That was in JP Morgan's, I believe, headquarters --
4 corporate office that JP Morgan owns or leases in midtown
5 Manhattan.

6 Q. In 2022, did you ever learn that FTX was engaged in
7 additional fundraising?

8 A. Yes.

9 Q. How did you learn that?

10 A. Their head of product, who also dealt with investors, his
11 name was Ramnik Arora, and Ramnik reached out to keep us up --
12 to ask us about interest.

13 Q. Did you ever talk with the defendant about FTX fundraising
14 in 2022?

15 A. I don't recall, and I don't know if others at Third Point
16 did.

17 Q. In your conversations with Ramnik Arora, were you ever told
18 that FTX was raising funds because there was a hole in FTX's
19 balance sheet?

20 MR. LISNER: Objection. Form.

21 THE COURT: Sustained. Leading.

22 Q. What, if anything, did Mr. Arora tell you about the reason
23 FTX was continuing to raise funds in 2022?

24 A. It was largely about growth, some increased marketing, and
25 potential acquisitions.

1 MR. LISNER: Could we get a time period in 2022.

2 Q. Approximately when were the conversations that you had with
3 Mr. Arora in 2022?

4 A. They were towards the middle to later part of the summer
5 into the early fall.

6 Q. Going forward in time to November 2022, did there come a
7 time when you became aware that FTX was encountering financial
8 difficulties?

9 MR. LISNER: Objection. Form.

10 THE COURT: Overruled.

11 A. I became aware. One of the industry trade publications had
12 published what they had stated was the balance sheet of FTX in
13 a news article, and that found its way onto social media, and
14 Twitter in particular, and that's when it started to become
15 more prevalent.

16 Q. Were you following the defendant on Twitter?

17 A. I was not, but others at Third Point were.

18 Q. And did you instruct others at Third Point to keep you
19 updated on what the defendant was saying?

20 A. Yes. And to be clear, I did check his Twitter feed. I did
21 not -- I was not subscribed, but others were.

22 MR. REHN: If we could bring up for the witness
23 Government Exhibit 529.

24 If we could expand this for the witness.

25 Q. Mr. Boroujerdi, do you recognize this?

1 A. Yes, I do.

2 Q. And what is this?

3 A. This is a member of the investment team who had worked and
4 looked at FTX as well who had sent over an email with a set of
5 deleted tweets from Sam Bankman-Fried.

6 MR. REHN: Your Honor, the government offers
7 Government Exhibit 529.

8 MR. LISNER: No objection.

9 THE COURT: Received.

10 (Government Exhibit 529 received in evidence)

11 Q. This one seems to be a little hard to read, but are you
12 able to read the tweet that was sent to you on November 9 of
13 2022?

14 A. Is that the top one?

15 Q. The top tweet. Just the first two sentences.

16 A. FTX has enough to cover all client holdings. We don't
17 invest client assets, even in treasuries.

18 Q. Is this description of how FTX treats client assets
19 consistent with what you were told about FTX treatment of
20 client assets when Third Point made its investment?

21 MR. LISNER: Objection. Documents speak for
22 themselves.

23 THE COURT: Sustained.

24 Q. Is this description consistent with what your understanding
25 was of how FTX treated client assets?

1 A. That is -- yes, it is consistent with the terms of service
2 and agreement as well.

3 Q. What is the current value of the \$60 million investment
4 that Third Point made in FTX?

5 A. Zero.

6 MR. REHN: No further questions.

7 THE COURT: Thank you.

8 Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. LISNER:

11 Q. Good afternoon. I know we are on the cusp of lunch, so I
12 will be brief.

13 You testified, Mr. Boroujerdi, that after the initial
14 investment you continued to pay attention to FTX, is that
15 right?

16 A. Yes.

17 Q. Do you recall reviewing audited financials for FTX after
18 your investment?

19 A. We looked at both unaudited and audited financials.

20 Q. And do you recall if the audited financial -- let me
21 rephrase.

22 Do you recall learning, from your review of FTX's
23 audited financials, that FTX relied on related parties or
24 currency and treasury management activities?

25 MR. REHN: Objection.

1 THE COURT: Ground.

2 MR. REHN: Hearsay.

3 THE COURT: Sustained.

4 Q. Did you have an understanding that FTX relied on related
5 parties for currency and treasury management activities?

6 MR. REHN: Same objection.

7 THE COURT: Overruled.

8 A. We understood that there were fiat on-ramps and off-ramps
9 and partners that would work with them on specific pieces.
10 Whether it was in the audited financials or not, it was part of
11 the diligence process.

12 Q. Did you have an understanding of whether related parties to
13 FTX served as conduits of fiat or crypto transactions for FTX?

14 A. We understood that partners like Signature Bank and others
15 could move fiat and USDC, which is a digital version of cash,
16 to and from FTX and other exchanges.

17 Q. My question was whether you are aware that related parties
18 had that relationship. Was Signature Bank a related party?

19 A. I would be unaware from a technical definition if that's
20 true.

21 Q. Were you aware of any related parties that performed that
22 function?

23 A. I do not know.

24 MR. LISNER: Can we put up for the witness only
25 Defendant's Exhibit 683.

1 Q. Would it refresh your recollection to review the document
2 on the screen?

3 MR. REHN: Foundation.

4 THE COURT: As to what?

5 MR. LISNER: I just asked --

6 THE COURT: I was here. I remember. I even have it
7 in writing in front of me.

8 Q. Do you recall knowing whether related parties served as
9 conduits of fiat or crypto transactions for FTX?

10 MR. REHN: Asked and answered.

11 THE COURT: Sustained.

12 MR. LISNER: No further questions. Enjoy lunch,
13 everybody.

14 THE COURT: Thank you.

15 Anything else, Mr. Rehn?

16 MR. REHN: Nothing further.

17 THE COURT: You are excused, sir. Thank you.

18 (Witness excused)

19 THE COURT: Anything else today?

20 MS. SASSOON: No.

21 THE COURT: Members of the jury, here comes your
22 intermission until next Thursday. Enjoy.

23 Do not do any research. Do not talk about this case.
24 Do not read anything. You understand that. With a big gap I
25 thought I had to say it again, but I know you know it.

1 See you at 9:30 next Thursday.

2 (Jury not present)

3 THE COURT: Anything else?

4 MS. SASSOON: Very quickly, your Honor.

5 We just wanted to put on the record that since our
6 discussion in the robing room, no issues have been raised with
7 us, and we are aware of none. It's our understanding that
8 everything with respect to that has been proceeding smoothly.

9 THE COURT: Thank you for doing that. I had meant to,
10 but I didn't remember.

11 Mr. Cohen, we have no problems on that front, right?

12 MR. COHEN: Your Honor, my client has been receiving
13 the extended-release medication that your Honor helped us to
14 obtain.

15 THE COURT: Since when?

16 MR. COHEN: Since yesterday.

17 THE COURT: OK.

18 MR. ROOS: Judge, one other thing.

19 Apparently, the record from yesterday, after speaking
20 with Andy, says Government Exhibit 1027. I had intended to say
21 1027, which includes the subparts A and B. So I just want to
22 put that on the transcript so that we have the right exhibit.
23 There is no 1027. It's 1027A and B.

24 THE COURT: Any problem with that, Mr. Cohen?

25 MR. COHEN: It's an outrage, your Honor.

1 THE COURT: I'm assuming that is consented to having
2 the necessary correction made.

3 I'll see you all next week.

4 (Adjourned to October 26, 2023, at 9:30 a.m.)
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

CAN SUN

Direct By Ms. Sassoon1896

Cross By Mr. Cohen1968

Redirect By Ms. Sassoon2001

ROBERT BOROUJERDI

Direct By Mr. Rehn2002

Cross By Mr. Lisner2022

GOVERNMENT EXHIBITS

Exhibit No.	Received
-------------	----------

5581910

3261927

5141934

3401939

261943

211, 225 and 236-2421949

791951

141A1952

923B1965

5232006

5292021

DEFENDANT EXHIBITS

Exhibit No.	Received
-------------	----------

2681971

3524-0121997